UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 24-11649 (CTG)
SUNPOWER CORPORATION, *et al.*,	. Jointly Administered
	. Courtroom No. 7
	. 824 North Market Street
Debtors.	. Wilmington, Delaware 19801
	. Monday, September 23, 2024
. . . . .	. 10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Jeffrey Michalik, Esquire
Chad Husnick, Esquire
Robert Jacobson, Esquire
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
333 West Wolf Point Plaza
Chicago, Illinois 60654

Zachary Manning, Esquire
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022

(APPEARANCES CONTINUED)

Audio Operator: Alyce Doody, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (CONTINUED):

For the Debtors:	Mark Collins, Esquire Jason Madron, Esquire Robert Stearn, Jr., Esquire RICHARDS, LAYTON & FINGER P.A. 920 North King Street Wilmington, Delaware 19801
	Tabitha De Paulo, Esquire KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP 609 Main Street Houston, Texas 77002
For the U.S. Trustee:	Richard Schepacarter, Esquire OFFICE OF THE UNITED STATES TRUSTEE 844 King Street, Suite 2207 Lockbox 35 Wilmington, Delaware 19801
For Bank of America:	Brian Resnick, Esquire DAVIS POLK & WARDWELL LLP 450 Lexington Avenue New York, New York 10017
For the Committee:	Steven Golden, Esquire PACHULSKI STANG ZIEHL & JONES LLP 919 North Market Street 17th Floor Wilmington, Delaware 19801
For the SEC:	William Uptegrove, Esquire U.S SECURITIES AND EXCHANGE COMMISSION 950 East Paces Ferry Road, NE Suite 900 Atlanta, Georgia 30326
For Maxeon Solar Technologies:	Andrew Kissner, Esquire MORRISON & FOERSTER LLP 250 West 55th Street New York, New York 10019

APPEARANCES (CONTINUED):

For the Securities Litigation Lead Plaintiff:	Michael Papendrea, Esquire LOWENSTEIN SANDLER LLP One Lowenstein Drive Roseland, New Jersey 07068
For Complete Solaria:	Stuart Brown, Esquire DLA PIPER LLP (US) 1201 North Market Street Suite 2100 Wilmington, Delaware 19801
For Arch Insurance Company and Applied Surety Underwriters:	Lisa Tancredi, Esquire WOMBLE BOND DICKINSON US LLP 100 Light Street 26th Floor Baltimore, Maryland 21202

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(Proceedings commenced at 10:01 a.m.)

THE COURT: Please be seated. Good morning. We are on the record in In Re SunPower Corporation, which is Case No. 24-11649.

Mr. Michalik.

MR. MICHALIK: Good morning, Your Honor. Jeff Michalik, Kirkland & Ellis, on behalf of the debtors.

So, we have plenty to discuss today. So, I don't want to take up too much time but I do think it makes sense to just set the table for where we think today's hearing will go.

THE COURT: That actually would be quite helpful. I think I know what is in front of me, what is not, but making sure that I know that would be great.

MR. MICHALIK: So, as Your Honor has heard, we really have two twin pillars that are supporting our path to confirmation. The first of which is the Moelis led sales process. That process has led us here today where we are going to be seeking approval for two separate sales of the debtors assets. The first is the debtors interest in SunStrong and the portfolio of loans.

As Your Honor may recall, that is the debtors financing arm of the business that has not really been operational since we filed. The other one is the stalking horse, which, you know, was filed with the bid procedures on

our first day and we have put through the process to determine that that has been the winning bidder and we are ready to seek approval of that. There is an objection outstanding on that one which we will turn over to our colleagues at our left to address at the appropriate time.

THE COURT: So, just help me there; only one outstanding objection or two?

MR. MICHALIK: So, we have one outstanding objection. The other one, we believe, we have resolution. We will read a statement into the record that we think resolves that.

THE COURT: Okay. I will be patient and find out as we go. That's not my strong suit.

MR. MICHALIK: The other pillar supporting our path to plan confirmation is our expedited plan process. As previewed last week, we are here today to seek conditional approval of the disclosure statement so that we can get on with solicitation with all parties rights reserved.

So, you know, I understand some parties will have rights to reserve and statements to read into the record on that one, but I think it makes sense to probably start there. So, unless Your Honor has any questions generally, I am happy to cede the podium to our newly minted partner, Zack Manning.

THE COURT: Just so I follow, you're starting with the disclosure statement provisional approval, what have you,

solicitation procedures, etc.

MR. MICHALIK: Correct.

THE COURT: Any objection to proceeding that way?

(No verbal response)

THE COURT: Okay. Seeing none, very happy to.

MR. MICHALIK: Thank you, Your Honor.

THE COURT: Thank you very much.

MR. MANNING: Good morning, Your Honor. Zack Manning with Kirkland & Ellis on behalf of the debtors.

THE COURT: Good morning. I neglected to say congratulations.

MR. MANNING: Thank you. So, I am going to handle Agenda Item 6, which is the disclosure statement motion filed at Docket No. 313. So, I would propose to first run through the debtors presentation and then turn it over to other parties, including the objectors, if that works for Your Honor.

THE COURT: Very well.

MR. MANNING: All right. So, with a last minute objection deadline that we are hearing this on an expedited basis, we only got four objections: one of which we have resolved, three of which remain outstanding, and I will speak to in just a moment. Between the motion being filed and the proposed order that we submitted overnight at Docket No. 591, we have made some notable changes and I would like to briefly

walk through those now.

So, the first one, as we already noted, was that we pivoted to seeking conditional or interim provisional approval of the disclosure statement today and with that all parties rights are reserved and all matters pending final approval of the DS which we are seeking to have considered at the confirmation hearing on October 18th.

Second, we have agreed to file a disclosure statement supplement on October 3rd that sets for the definitive scope and terms of the proposed plan releases.

Third, we now have Class V, that is the class of general unsecured claims as a deemed rejecting class that will not be solicited. Instead, Class V holders will receive the confirmation hearing notice, a notice of non-voting status and a release opt-out form, and a letter from the committee regarding the plan and the releases therein.

The debtors understand that the committee does not object to this construct for purposes of interim DS approval, subject to all parties rights being reserved pending final DS approval. And I will let the committees counsel confirm that when they are up at the podium. We would also make conforming changes to the solicitation -- in the solicitation version of the plan and disclosure statement. I did notice it was not reflected in the proposed order we filed overnight. So, we can file a revised proposed order just to tie that out

there.

Fourth, we had added language to the proposed DS order regarding notice as to the treatment of certain Cigna contracts which we understand resolves Cigna's objection filed at Docket 458.

So, that leaves us with three outstanding objections to interim approval of the disclosure statement. So, the first is the securities litigation lead plaintiff's objection that is filed at Docket 530; the U.S. Trustees objection filed at Docket 557; and the SEC's objection filed at Docket 563.

So, as to the securities plaintiff we partially resolved his objection with language to be inserted into the solicitation version of the disclosure statement and that is just in relation to the securities -- as a description of the securities litigation. I would also just note for the record that no class has been certified in the securities litigation, so the lead plaintiff is not acting as a class representative, just acting on behalf of himself at this juncture.

As to the rest of the securities plaintiff's objection, as well as the U.S. Trustees and the SEC's respective objections, the issues that they raise are generally confirmation issues. They are not disclosure statement issues and the debtors will, of course, address

confirmation issues in connection with the confirmation hearing, but those issues aren't up for consideration or decision today. All I will say for now is that the debtors disagree with the objectors description of the plan and the plan releases, but, again, not an issue for today.

Turning to the disclosure itself, so a lot of the objectors focused on the disclosure as to the proposed plan releases. So, I will first note that the disclosure is typical of the disclosure as to plan release that you see in large typical Chapter 11 cases. I think as a practical matter here and elsewhere, plan releases are subject to change based on ongoing negotiations between solicitation being launched and the confirmation hearing as well as what the Court determines at confirmation.

Here, we are going above and beyond by filing a DS supplement on October 3rd that sets for the definitive scope and terms of the proposed plan releases. So, we are taking a further step towards disclosure beyond what is typical in this context. I would also emphasize, again, that the relief that we are requesting today is interim approval of the disclosure statement. The debtors are confident that the DS satisfies the adequate information standard, but that everyone's rights are reserved regarding final approval of the disclosure statement at the hearing on October 18th.

So, that is all I have for now, but I just reserve

to respond to responses that other parties would make.

THE COURT: Of course. Let me hear from other parties.

Mr. Golden.

MR. GOLDEN: Thank you, Your Honor. Steve Golden, Pachulski Stang Ziehl & Jones, proposed counsel to the committee. Good morning, Your Honor.

Your Honor, briefly, just to take a key from Mr. Manning, the committee does not oppose entry of the order, but, as he said and as I will reiterate, we reserve all rights in connection with final disclosure statement approval and plan confirmation including the Class V deemed rejection construct.

As noted last week and in our reservation of rights that was filed at Docket No. 574, the committee had and still continues to have grave concerns not only about the process but as we continue to learn more facts its only clear to the committee that the estates to have valuable claims against numerous parties that simply cannot be released absent material value coming into the estates. But as Your Honor, I think, noted last week, the committee does view this process as, in essence, a fee option for the debtors to continue to explore settlement with the committee with other parties in interest in their requested expedited timeframe.

Candidly, Your Honor, having read the other

parties objections that are still pending, I don't know that the committee actually disagrees with any of the points, but, again, we are willing to work together, with the debtors, and all parties rights will be reserved, including the committees, upon the final approval so that we can continue to pursue a potential settlement here.

As it has since formation, we will continue to work towards that settlement and work towards consensus, but if it cannot be reached, Your Honor, to be very clear, the committee is fully prepared to bring these matters to the Court through litigation.

So, Your Honor, thank you very much and we look forward to continue working with the parties on this matter.

THE COURT: Thank you, Mr. Golden. I understand.

MR. GOLDEN: Thank you, Your Honor.

THE COURT: Mr. Schepacarter.

MR. SCHEPACARTER: Thank you, Your Honor. May I please the Court, Richard Schepacarter for the United States Trustee.

One of the aspects of this case, and I guess it leads to the expedited nature of it, is that it changes, it metamorphosizes, into something else as we go along even over the weekend. Our objection, sort of, remains the same and I know Your Honor has read the objection. It's kind of lengthy to a certain extent. I think that we still highlight the

fact that -- we still have problems with the process being too condensed.

THE COURT: I understand.

MR. SCHEPACARTER: But I think we still have issues with respect to, as we said in our objection, the releases. I think that is kind of highlighted a little bit now that the unsecured creditors are now being deemed to reject. So, they are going to receive nothing at this point.

I just ask this question maybe rhetorically, but given the fact that the committee still has potential claims out there, if there is a recovery parties aren't going to be able to vote on it even though I think the committee wants to urge the opt-out. So, I don’t know how that all falls out, how that all falls together in the end.

THE COURT: So, I have a little bit of the same question, but what I understand the parties are saying is, Judge, that may well be an issue at confirmation. If it is, and that blows everything up, we understand, we think it won't, but to the extent it does, it does. We are prepared to take our chances and proceed that way.

I guess my question for you is in a world in which the parties who have economics in this are willing to take that chance why shouldn’t I -- and I say this not to minimize your concerns, but in a world in which that is what the parties are telling me what is there that is so systemic or

fundamental that I ought to, sort of, say in the matter of the integrity of the process you can't do that.

MR. SCHEPACARTER: I think it dovetails with our objection, which our objection isn't -- the key part of our objection is that the plan should not go forward because it's a plan and a disclosure statement based on a plan that is not confirmable so that it shouldn't go out -- even be --

THE COURT: I understand, but the same principles -- like under American Capital, right, what the Third Circuit says is that a Court may cut this off at the pass, at the disclosure statement stage if its facially non-confirmable, but that is very much a may also. It seems to me you would only do that if its unconfirmability were, sort of, fall off a log obvious you would save everyone the trouble.

If it's a disputable question and it sort of depends, and as you say -- look, the moving target nature of this I get your frustration with. I have been in the shoes of a party that, you know, is trying to figure out where the target is. I understand your concerns. It's also the nature of the business though, right.

MR. SCHEPACARTER: I understand that. I see where your "may" is. My "may" is that I see it not so much fall off the log obvious, and that is one reason why you would not confirm -- not allow for the disclosure statement to go forward. The other portion of it would be, which is what I

am going to sort of highlight for Your Honor, is that because of the releases and the exculpations and the plan settlement and the injunction and things of that nature, that this really shouldn't go forward at this point in time.

THE COURT: See --

MR. SCHEPACARTER: Now if Your Honor --

THE COURT: -- can I just share my thoughts. I am not minimizing your concerns about all of that. It seems to me all of that is solvable with an appropriate crafted confirmation order everyone of those concerns, I think, can be solved, right. If the releases are broader then the law permits we will write a confirmation order that brings them back to what is consistent with law. If the exculpations extend, you know, beyond what the Third Circuit in PWS authorizes we will issue a confirmation order that says notwithstanding anything in the plan, here is the scope of the exculpation.

So, I understand your concerns. I am not minimizing them, but it seems to me that this is the wrong -- stopping it in its tracks feels to me like the wrong tool to solve what I think might well be without prejudice to anyone's rights could well be real problems, but it's not clear that we need to strangle it in its crib because its got these problems.

Does that question, to the extent there is a

question in that, make any sense to you?

MR. SCHEPACARTER: It does and I will ask Your Honor this question.

THE COURT: You're allowed to do that. It's okay.

MR. SCHEPACARTER: I know you have read our objection and you've see all the grounds that we have covered on that objection. I think we covered it as substantial as we can. Some of it was based on the prior plan, again, (indiscernible), but if Your Honor has read that, and I don't want to belabor the point, after reading all of that is Your Honor of the opinion or of the mindset to say, look, I have read all the objections, I have looked at what you said about releases, we can deal with that at confirmation, exculpation, confirmation, plan settlement, injunction, all that we can do -- basically telling me I understand what you are saying, but you can sit down, Mr. Schepacarter, and say, look, I have read everything, we will deal with it, and I --

THE COURT: That is my reaction on having read it. Now if you think I have missed something and there's something that is not solvable with language in a confirmation order I want to not run you over.

MR. SCHEPACARTER: I understand.

THE COURT: Based on my having reviewed the papers it seemed to me, look, some of your objections are stronger than others, but there are points here that -- look, the

parties are talking, I understand, I don't want to put a thumb on the scale, I don't want to -- I want to be careful about what is happening in the room that I'm not in and pretending that I know what is going on there.

It seems to me -- I would encourage the parties to continue to talk and if we get to a confirmation hearing and there are disputes to resolve I am more then happy to do my job, but I don't see, from my review of it, a problem that I can't solve at the confirmation hearing with a pen. That is, at least, my reaction. So, if that --

MR. SCHEPACARTER: Again, let me ask a question. If Your Honor -- if it turns out that the releases at the time of confirmation shouldn't have been an opt-out, should have been some sort of --

THE COURT: Okay. Let's talk about that. Let me say this to all parties. This not a secret, I have before me pending the question of opt-in, opt-out after Purdue Pharma. Look, the safest thing to do if one -- because this is expressly interim approval and no one is saying that the approval of the procedures should have preclusive effect if the parties want to go forward in the face of uncertainty with an opt-out form I am not stopping you, but nor is the approval going to preclude someone from coming in later and saying that form of release is inappropriate.

So, look, if someone -- I am several days away

from a decision in the case that is pending before me and I know that this case here is on a short timeline and no one is going to wait for me, and I don't ask you to. I guess all I can say is in a world in which folks are proceeding in the face of uncertainty the safest thing to do if one wants a form of -- a ballot that would withstand no matter how that comes out an opt-in is the safer thing to do.

If one goes forward with an opt-out form and by the time we get to confirmation I've concluded that that is not sufficient to manifest consent then those forms won't manifest consent and those releases won't be effective. So, that is all I can tell you unfortunately. That is where I am. If you want to wait three or four days until I resolve it you may, but I don't think that works for anybody. So, we are all here doing the best we can.

All I can tell you is that the safest thing to do would be an opt-in form. If you want to take your chances that parties are entitled to.

MR. SCHEPACARTER: I understand that. Again, this is -- I don't want to say its new territory, but its weird territory.

THE COURT: It is. I hate saying here --

MR. SCHEPACARTER: I feel like I am on the moon and I should be on some other terraform.

THE COURT: Look, everyone is doing the best they

can under the circumstances, right. I understand your position. I am not faulting you for making the arguments, that is your job, but I do feel like what the debtors position on all of this has been is we understand those issues are out there, we are going to -- you know, this is all interim, everyone's rights are reserved, but given the shortness of time we have no choice but to charge ahead and do our best to patch and fix as life evolves.

Again, if there are grownup parties with their eyes open deciding to proceed that way, I am not inclined to throw myself in the way.

MR. SCHEPACARTER: I understand that, Your Honor. As I have said, you know, we have problems with the releases, the exculpations and the like. I guess if we are going forward, we're going forward on an interim basis and that all parties rights are reserved. All of our objections are reserved. That may change, again, based on, as Your Honor indicated, a decision may be forthcoming in a week or so. That may change the parties way of thinking and way of proceeding going forward especially in light of the fact that the Class V claimants are now deemed to reject and are not even having a ballot sent to them but are having the opt-out form sent to them along with a letter that says the committee says you should opt out.

THE COURT: I understand. If I were a better

person I would have issued the decision already, but we are where we are.

MR. SCHEPACARTER: Understood, Your Honor. And you are a better person.

Having said all of that and having this colloquy, I don’t have anything else to add.

THE COURT: Look, as I've said before, these observations are helpful to me. I appreciate it, but all your substantive rights are reserved, but as to disclosure statement, subject to the caveats, none of it persuades me that I need to stop the process in its tracks today.

MR. SCHEPACARTER: Understood. Thank you, Your Honor.

THE COURT: Thank you, Mr. Schepacarter.

MR. UPTEGROVE: Good morning, Your Honor.

THE COURT: Good morning.

MR. UPTEGROVE: William Uptegrove on behalf of the United States Securiteis & Exchange Commission.

We filed an objection, which is at Docket No. 563, to the disclosure statement and the motion seeking to approve it. I won't repeat what we say there, but I would like to raise a few points and address some of the points that Your Honor has just made with the U.S. Trustee, and would like some leeway to sort of address the falling off the log issue. Particularly, I wasn't aware that you were about to render a

decision on the opt-out, opt-in, but I think that you probably have heard our positions before on this, but I would like to have a little leeway.

THE COURT: Certainly. One thing I do try to do is make sure everyone has a chance to be heard. So, you are entitled to that.

MR. UPTEGROVE: Thank you, Your Honor. So, the gist of our objection is that the disclosure statement describes a plan containing unconfirmable third-party release. Its unconfirmable for, at least, three reasons. Before I go into that I want to address the issue of why we should do it here, at least, kind of at a high level and then I will get into it more as I go along. I think there is at least three reasons for that before I get into my main three reasons.

One is the potential unconfirmability. Two is it has to do with a solicitation. It kind of intersects with solicitation and notice about whether the opt-out is appropriate. I think that that matters here particularly -- on the record people have said rights are reserved, but I believe there might need to be additional language to the order approving the disclosure statement and the solicitation procedures because some of that language may not be as clear about the extent to which rights are reserved and I will get into that.

The other thing, just a use of resources, as a practical thing about, you know, if we are going to have this fight at confirmation, if there is a particular area that is just fall off the log obvious that the release in the plan -- the plan is unconfirmable because of the third party release then why go forward and spend the resources of everyone, of the debtor, the estate, other parties, the SEC, of having a prolonged fight over this issue.

I think that there is different stakeholders here, not just apparently the general unsecured creditors are now in the same boat, but I think the shareholders, public shareholders, are in a separate bucket from everyone else. I think with them it is a lot clearer that its fall off the log obvious that the plan is unconfirmable with respect to the release and this is why, three reasons:

First, from the perspective of public shareholders it is non-consensual. In Purdue the Supreme Court was very clear nothing in the bankruptcy code authorizes a third-party release. This Court has previously stated that it was comfortable approving third party releases containing opt-out provisions, at least in part, because the Court viewed a third-party release to be like any other bankruptcy provision that if people slept on their rights and did not return the form their still bound. Under that rationale, I would argue, they were bound not because they consented but because the

plan was confirmed under Section 1129 and is, therefore, binding under Section 1141 even if some parties don't consent.

That is how bankruptcy works. Congress has made an exception in the bankruptcy code to the usual contract provision of consent. To the extent a plan provision could previously bind a non-consenting stakeholder in the way I just described, our position is Purdue changed that. Purdue tells us that there is nothing in the bankruptcy code that binds anyone to a third-party release.

So, this raises at least two questions. First, what is consent. Second, what law governs the enforcement of parties agreement manifested in the release. Purdue, in my view, stands for the proposition that the code doesn't answer these questions. One implication of that is that Courts cannot use the code to enforce non-consensual releases. Another implication is that any answers to those questions must arise from non-bankruptcy law, most likely state contract law. That is also the conclusion --

THE COURT: Let me stop you there.

MR. UPTEGROVE: Sure.

THE COURT: Are you aware of any jurisdiction that has, sort of, idiosyncratic or surprising state law requirements for the ordinary what counts as offer and acceptance because you asked the choice of law question and

my usual choice of law is before I make myself dizzy over a choice of law analysis I want to see that it matters to the outcome. I have looked at this question and I haven't found anything that leads me to -- if you are aware of something, I want to hear about it, but does my question make sense?

MR. UPTEGROVE: I think so. If you are asking the question is idiosyncratic out of the norm. So, Judge Owens in Emerge Energy set forward, and its in our objection those elements that are in state law, if it is something that you are saying is there a state that has something different then that I am not aware of it. That would be a choice of law issue.

So, the closest one is, in her formulation, number two and its whether or not there is some reason that the person would know, right, that -- I just don't think for shareholders here that you are going to find that regardless of the loss because I don't -- I am not aware of that. Even if North Dakota had that --

THE COURT: Right. I follow. Can I ask you the same question I was asking Mr. Schepacarter.

MR. UPTEGROVE: Sure.

THE COURT: So, look, that question is in front of me and everyone's rights on that are preserved. Let's, for a moment, imagine I don't resolve it between now and the confirmation hearing, which I very much hope I will, but for

today's conversation imagine that I don't, and we're here at the confirmation hearing and my ruling today is your rights on that issue are fully preserved. So, therefore, what -- my question to you is what harm would I be causing to the interest of the public shareholders or to the SEC, sort of, derivatively on their behalf if what my ruling were today is this disclosure statement can go out but its going out purely on a provisional basis with all rights reserved and if you persuade me at the confirmation hearing that the public shareholders have not consented and, therefore, can't be bound by the release the confirmation order will say nothing herein shall bind any public shareholder to any third party release.

If you are right and I were to say that at the confirmation hearing, what harm would you have suffered by my letting this go forward today?

MR. UPTEGROVE: So, to the extent our rights are reserved particularly with respect to the arguments on the form and manner of notice and service here, if those things are preserved probably the only ramification is --

THE COURT: Waste of resources.

MR. UPTEGROVE: -- waste of resources.

THE COURT: I understand that. There my instinct is they are grown up parties who are fiduciaries who are making decisions with their eyes open knowing that at the end

of the day they could lose, but given the array of practical options they face they have decided to go forward and take their chances. The question then to me is, is that so irrational on their part that I need to stop them in their tracks. I will tell you my instinct to that is no.

I take your other arguments quite seriously. We will see how this all comes out, but my instinct -- just so you understand what the target is that you are shooting at, I am not at all dismissive of your substantive points about the releases. Either the argument that the consensual releases aren't a reasoned exercise of the debtors business judgment and whatever, whatever flows from that the committee is going to argue, you know, open mind there.

As to the so-called consensual releases, the arguments that the mechanism doesn’t adequately obtain consent and, therefore, those releases may not be enforceable total open mind there. That is an issue that I am actively thinking about, but I think at the same time what we are dealing with here is a dynamic in which the debtor and the committee, right, the people who have a principle economic stake have both said to me, Judge, we get it, we want to go forward and try to talk in the meantime.

Again, that doesn’t mean that if we had a process that threatened the integrity of the bankruptcy system I would say, well, you guys agree so go ahead, but nothing --

so, I want to be listening to something that causes me to stop, but the standard I think I am applying is do I have something that is, sort of, so offensive as a matter of fair process that I need to say the Court's imprimatur can't be on this. We have to stop it dead. Nothing I have seen has led me to have that reaction. To the extent that is helpful to understand where I am, that is where I am.

MR. UPTEGROVE: Very helpful, Your Honor. I think for our purposes, as long as the understanding is, as I said, for the issue of solicitation and notice that our rights are reserved to argue the issue of form and manner of notice, I think that works. I also don't recall, and I don't know, maybe we can work with the debtors afterwards, the way the order -- its some proviso language. I don't know if it's there now.

THE COURT: If the order doesn't do what you just said, I would encourage the parties to talk. I am seeing nods. I think that is what the debtor intends the order to do. So, if there is a wordsmithing issue, you know, you all will do better than I will at fixing it.

MR. UPTEGROVE: So, I will not belabor the point about the release. I understand the Court's position on that. So, we had a separate issue that we raised in our objection which had to do with document retention. In light of the impending sale this is something that has been highly

present on our minds for many weeks and we have been working and having conversations with the debtor on that issue and those have been productive. We have been provided with some representations about the status of the document preservation and we have gotten some comfort from that.

THE COURT: Can I stop you there because I saw this objection in the disclosure statement objection, but is this, in principle, a disclosure statement issue or a sale objection?

MR. UPTEGROVE: Its not an objection to the sale because we actually think we have come up with a protocol that is going to go forward that we are going to be comfortable with, but we haven't, and I guess we could have done a reservation of rights there, our bigger issue right now is going forward of not just with the sale, because we have worked with the debtor on some of the issues about on the closing date what is going to happen with the documents, but after that when the plan administrator comes in an everything else what is going to happen with the documents. So, I think that is a confirmation issue but it is such an important critical thing for us we wanted to flag it now and put it on Your Honor's radar.

THE COURT: Unless someone wants to tell me that I should do anything that prejudices your rights in that regard let's assume that they are fully preserved.

MR. UPTEGROVE: That's it. Unless you have any further questions --

THE COURT: No, this is helpful. I appreciate it.

Anyone else with respect to disclosure issues?

Mr. Papendrea.

MR. PAPENDREA: Yes, Your Honor. Thank you. Its Michael Papendrea from Lowenstein Sandler on behalf of the plaintiff in the securities litigation pending in the U.S. District Court for the Northern District of California under Case No. 22-956. Thank you for entertaining my appearance remotely given the timeline here.

I am not going to belabor the point. We have heard the U.S. Trustee and the SEC both raise a substantially similar issue. That said, I just wanted to speak from the perspective of the securities litigation lead plaintiff who, you know, is Court appointed to act on behalf of the proposed class. The concern we have here is, you know, we don't want to see -- we understand their rights are reserved in connection with the final objection deadline with respect to disclosure statement and confirmation, but we are appearing today because we simply don't want to see the cart leave the barn in a process that, at least, from our perspective with respect to our client's constituency is, you know, flawed out of the gate.

Essentially, you know, the opt-out mechanism

process being proposed here is putting an impetuous on class members who don't necessarily already have that impetus to pay mind to an opt-out, non-voting notice that, you know, right on its first page says you are not entitled to vote on the plan, you're receiving nothing under the plan and even if they actually received the notice on this timeline it, essentially, gives them two weeks with respect to release provisions that are currently not even established yet.

Frankly, we just see an issue right out of the gate as to whether that can actually constitute consent. That being said, we hear Your Honor and so long as all rights are reserved in connection with the final objection deadline I think we would want to take a close look at the solicitation procedures order to make sure nothing in there approves the form and manner of notice in that sense so as to cut off those arguments.

You know, we would certainly argue for the opt-in mechanism you kind of threw out there before, but we won't push that issue today, Your Honor. So, with that we will take a look at the proposed order and proceed from there.

THE COURT: Thank you, Mr. Papendrea.

Let me -- is there any other party in interest that would like to be heard with respect to the provisional approval of the disclosure statement?

(No verbal response)

THE COURT: Let me hear from the debtor.

MR. MANNING: Thank you, Your Honor. For the record, Zack Manning of Kirkland & Ellis, on behalf of the debtors.

Let me just reiterate for everyone, everyone's rights on all matters are reserved. The SEC, the U.S. Trustee, the committee, the securities plaintiffs, its full reservation as described. To the extent folks want to wordsmith some of the reservation of rights, happy to work on that but we did file actually the proposed revised order we filed last night, added a proviso specifically in relation to the opt-out form. So, we think that is satisfactory, but, obviously, happy to have a conversation.

I think at the end of the day all we are saying here is let's give peace a chance. We want to get to a consensual resolution with as many parties as we can and we are going to work on that, that is always the goal. We will arrive at the confirmation hearing on October 18th, sort of with whatever we have in hand at that point. To the extent there are issues at that point we will address them then, but for today we are just looking to launch solicitation so we can get on with the process with everything that Your Honor said.

So, I don't have anything else for the debtors unless Your Honor has any questions. We would ask you to

approve the motion with a revised proposed order to follow.

THE COURT: Okay. So, for the reasons that I couldn't keep to myself throughout the colloquy, I will approve the disclosure statement subject to all of those caveats without prejudice to anyone's substantive rights with respect to releases or any other confirmation issue and allow a process to happen and hope that the parties engage in good faith in an effort to resolve what they can and if they can't at the confirmation hearing I will look at it and resolve whatever disputes there are. So, I am happy to allow that to go forward. We will enter the order.

MR. MANNING: Thank you, Your Honor.

THE COURT: Let me encourage you, in light of the various objections, to see if you can meet and confer with respect to a form of order. So, you said you were submitting a revised version. In any event, if you could submit that under certification, great.

Let me say this, if there are -- look, the debtor has represented that this is entirely without prejudice to anyone's substantive rights. So, if we get to confirmation and the debtor gets to this podium and tells me that the entry of today's order prejudices someone's substantive rights they are going to have an unhappy time at that podium.

MR. MANNING: We are not going to do that.

THE COURT: Okay. So, to the extent, you know, one

needs 17 provisions that say for the avoidance of doubt notwithstanding anything stated herein this is without prejudice, let the parties work through that if you can't resolve a form of order the parties can submit competing forms, but that seems to me that that shouldn't be necessary in light of the clarity that thanks to the debtor everyone agrees that this is without prejudice. So, with that I will enter the order and we will wait for a certification.

MR. MANNING: That sounds good, Your Honor. Thank you.

The last thing I have, speaking of certifications of counsel, we also filed yesterday certifications of counsel in relation to the final cash management order and a third interim cash collateral order at Docket Nos. 586 and 582 respectively.

THE COURT: I have reviewed those before getting on the bench and started the process in motion to get those orders entered. The terrific team here, I'm sure, will get those entered promptly.

MR. MANNING: Thank you, Your Honor. With that, I will turn the podium over to my partner, Ms. De Paulo, for the next part of our agenda.

THE COURT: Very well. Thank you very much.

Ms. De Paulo.

MS. DE PAULO: Good morning, Your Honor. Tabitha

De Paulo from Kirkland & Ellis on behalf of the debtors.

I plan to proceed with the evidentiary portion with respect to the sale orders and then was going to hand it over to my colleague, Mr. Jacobson, to address those orders if it's okay with Your Honor.

THE COURT: Certainly.

MS. DE PAULO: So, I would like to introduce a couple of declarations that the debtors had submitted in support of the sale orders. The first is a declaration from Rick Polhemus from Moelis & Company, the debtors investment bankers, in support of the proposed orders. That was filed at Docket No. 587. Mr. Polhemus is present in Court today and available to answer any questions. The debtors would request that the Court admit Mr. Polhemus's declaration into evidence.

THE COURT: Is there any party in interest that would like to be heard with respect to the admission into evidence of Mr. Polhemus's declaration that is filed at D.I. 587?

(No verbal response)

THE COURT: The declaration will be admitted.

(Polhemus declaration received into evidence)

THE COURT: Is there any party in interest that wishes to cross-examine Mr. Polhemus with respect to the matters set forth in his declaration?

(No verbal response)

THE COURT: Okay. Seeing none, you can proceed.

MS. DE PAULO: Thank you, Your Honor.

The second declaration is from Mr. Matthew Henry, the debtors chief transformation officer, that was filed at Docket No. 588. Mr. Henry is also present in Court today and available to answer questions. Otherwise, the debtors would request that the Court admit Mr. Henry's declaration into evidence.

THE COURT: Okay. So, let me ask this question: Is there any party in interest that would like to be heard with respect to the introduction into evidence of the declaration of Matthew Henry that is docketed at D.I. 588?

(No verbal response)

THE COURT: Seeing none, the declaration will be admitted.

(Henry declaration received into evidence)

THE COURT: Is there any party in interest that wishes to cross-examine Mr. Henry with respect to the matters set forth in the declaration?

So, Mr. Henry can come to the stand.

Ms. Barksdale, if you would swear the witness.

MATTHEW HENRY, WITNESS, SWORN

THE COURT REPORTER: Please state your full name and spell your last name for the record.

THE WITNESS: Matthew Henry, H-E-N-R-Y.

THE COURT REPORTER: You may be seated.

THE COURT: Counsel, you can introduce yourself, but then hold on a moment before you begin the cross-examination.

MR. KISSNER: Certainly. Andrew Kissner of Morrison & Foerster on behalf of Maxeon. I just have a couple of questions.

THE COURT: Okay.

MR. STEARN: Your Honor, if I may for the record, Bob Stearn from Richards Layton & Finger on behalf of the debtors. May I please the Court. I will be handling Mr. Henry's examination on behalf of the debtors. So, if I rise to object that will be why.

THE COURT: Very well. Thank you, Mr. Stearn.

In case there is anyone who isn't familiar, we are required under various rules to limit remote participation in hearings that are evidentiary to, essentially, parties and their representatives. So, we are in the process of moving out of the Zoom those who are not. Anyone is welcome to be here in Court, we are just dealing with the Zoom issues. So, if you want to understand the delay, that is what is going on.

(Pause in proceedings)

THE COURT: Mr. Kissner, you may proceed.

MR. KISSNER: Thank you.

CROSS-EXAMINATION

BY MR. KISSNER:

Q Good morning, Mr. Henry. I just have a couple of questions for you.

So, one of the assets the debtors intend to sell are the SunPower brand name and related trademarks, correct?

A That is correct.

Q Is that okay if I refer to those as the SunPower marks, you will know what I'm talking about?

A Yes.

Q After the sale did the debtors intend to cease operations once its closed?

A Yes.

Q So, fair to say the debtors are not going to continue using the SunPower marks after the sale closes?

A That is correct.

MR. KISSNER: Thanks. That is all I have.

THE COURT: Okay. Mr. Stearn, anything further?

MR. STEARN: Just one second, Your Honor.

(Pause)

MR. STEARN: Nothing from us, Your Honor. Thank you very much.

THE COURT: Okay. Any other party in interest wish to cross-examine Mr. Henry?

(No verbal response)

THE COURT: Thank you for your testimony today. You can step down.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

MS. DE PAULO: Thank you, Your Honor. We actually have a representative of the stalking horse bidder here today from Complete Solaria and they have also submitted a declaration. So, at this point I would propose to hand the podium over to counsel for Complete Solaria, Mr. Brown, with respect to that declaration.

THE COURT: Very well. Mr. Brown.

MR. BROWN: Thank you, Your Honor. For the record Stuart Brown, DLA Piper, on behalf of the successful bidder, Complete Solaria.

Your Honor, Docket No. 585, we filed the declaration of purchaser representative Daniel Foley in support of the debtors reply to Maxeon Solar Technology Ltd., objection to going concern sale to Complete Solaria, Inc. Your Honor, we would move the admission of Mr. Foley's declaration.

THE COURT: Is there any party in interest that would like to be heard with respect to the admission into evidence of Mr. Foley's declaration that has been docketed at D.I. 585?

(No verbal response)

THE COURT: Seeing none, the declaration will be admitted.

(Foley declaration received into evidence)

THE COURT: Is there any party in interest that wishes to cross-examine Mr. Foley?

Okay. So, Mr. Foley, if you could come to the stand.

Could you swear the witness, please.

THE COURT REPORTER: Yes.

DANIEL FOLEY, WITNESS, SWORN

THE COURT REPORTER: Please state your full name and spell your last name.

THE WITNESS: Daniel Foley, F-O-L-E-Y.

THE COURT REPORTER: You may be seated.

THE COURT: Mr. Kissner, you can proceed.

MR. KISSNER: May I approach the witness?

THE COURT: You may.

MR. KISSNER: Again, for the record, Andrew Kissner of Morrison & Foerster on behalf of Maxeon.

We are good to go, everybody is --

THE COURT: Yes. You may proceed.

CROSS-EXAMINATION

BY MR. KISSNER:

Q Good morning, Mr. Foley.

A Good morning.
Q Thanks for being here. I just have a couple of questions about your declaration.
First, how long have you worked in your current role as chief financial officer for Complete Solaria?
A Approximately two and a half months.
Q Approximately two and a half months. Before then what did you do?
A Before that I was chief financial officer of a manufacturing company in the Midwest.
Q And you have worked in finance or the finance world for about how long?
A 20 plus years.
Q So, fairly experienced. You have your declaration in front of you.
A I do.
Q Could you turn to page 2, Paragraph 2, and let me know when you are there?
A I am there.
Q So you see there is a sentence that begins "One of the critical elements of the acquisition." Do you see that?
A Paragraph 2, correct?
Q Yes, sir.
A I do.
Q So, your testimony is that:

"One of the critical elements of the acquisition was the purchase of the SunPower name and related brand loyalty."

Do you see that?

A I do.

Q What do you mean by critical element of the acquisition? What does that mean?

A It's a substantial portion of the value that we assigned to the deal.

Q Have you ever had the SunPower brand appraised?

A We have not?

Q Are you familiar with the asset purchase agreement?

A I am.

Q You have reviewed its provisions?

A I have.

Q To your understanding, does the asset purchase agreement allocate any value towards the SunPower brand?

A Not to my knowledge.

Q Have you every undertaken any efforts to assign a value to the SunPower brand?

A I have not.

Q And has anybody on your team done that at your direction?

A We have not.

Q Still in Paragraph 2, the next sentence, your testimony is:

"While the brand had certainly suffered as a result of the company's financial condition, it nonetheless has an important market value if properly managed."

Do you see that?

A I do.

Q So, you say the company's financial condition -- just to make sure we're on the same page, the company is SunPower?

A Correct.

Q Okay. So, you say the brand has suffered in value because of SunPower's negative financial condition. Is that right?

A Correct.

Q In what way do you think its suffered in value?

A Bankruptcy certainly would suffer -- make the brand suffer in value.

Q So, you think it's gone down as a result of SunPower's lack of financial wherewithal to operate?

A Yes.

Q Would you agree then that the financial condition of a company can have an impact on that company's brand name?

A I do.

Q So, if a company has poor financial condition, then its brand or brands used by it could have a lower value?

MR. BROWN: Objection. Lack of foundation.

MR. KISSNER: Well, the witness has worked in

financing roles for over 20 years. He is the CFO. He says, in his declaration, he is familiar with the brand and the business.

MR. BROWN: Sorry, Your Honor. You're asking questions generally about any company and if you want to phrase it as a hypothetical, I guess that would be okay, but you are not. You are implicitly linking it to this company and these facts and circumstances. So, therefore, the questions lack foundation.

THE COURT: All right. Well, it seems to me that you should clarify whether you are asking about the debtor/seller or asking a hypothetical question and we will address an objection once we understand clearly what it is the question is asking.

MR. KISSNER: Sure. Fair enough. I will rephrase.

BY MR. KISSNER:

Q All else being equal, is it your experience that a company in poor financial condition will have a lower brand value?

MR. BROWN: Objection. Again, lacks foundation whether this witness has ever had experience with companies that are in distress or not.

THE COURT: I will sustain it as far as it goes. I think you can probably establish a foundation, but I don’t think you have.

MR. KISSNER: I could and I can also move on.

BY MR. KISSNER:

Q If we could go to Paragraph 3 in your declaration. You see the last -- well, the second to last full sentence that starts with "BFA." Do you see that?

A I do.

Q And BFA that is the brand framework agreement between SunPower and Maxeon. Is that what you are referring to?

A Correct.

Q Have you ever read the BFA?

A I have.

Q So, you are familiar with its terms?

A I am.

Q Okay. So, in the next sentence your testimony is:

"Further, there are certain restrictions and requirements to maintain the brand quality under the BFA including not using the marks in any manner that may deteriorate the value of the marks, coordinating with Maxeon on brand asset, strategy, and other matters that implicate SunPower brands or any derivative thereof to promote the worldwide brand value and mitigate any confusing uses of the mark."

Do you see that?

A I do.

Q That is your testimony?

A Yes.
Q What -- so, would it be fair to say that one of the things -- one of the things inherent in using a brand in a way that doesn't deteriorate the value of the marks would be being a responsible steward of the brand, is that fair? I am just paraphrasing.
A Yes.
Q Would that mean not infringing on trademarks?
A Yes.
Q Would that mean not using a brand name in a way that disparages other parties?
A Yes.
Q Would you agree that this entails basic quality control over associated products under the brand name?
A I do.
Q I am going to show you something.
Can I approach?
THE COURT: You may.
BY MR. KISSNER:
Q Do you have the document I just handed up in front of you?
A I do.
Q Do you recognize this?
A I do.
Q What is it?

A This appears to be a 10-K.
Q And for which year is it?
A 2023.
Q If you could turn all the way back to the back page, there is a certification of chief financial officer. Do you see that?
A What page are we on here?
Q The very last page of this.
A Correct. Yes.
Q So, there is a signature there from Brian Wuebbels. Do you see that?
A I do.
Q Who is he?
A Brian Wuebbels is the former chief financial officer.
Q So, he was your predecessor?
A Yes.
Q And then on the prior page there is a signature of a Chris Lundell. Do you see that?
A I do.
Q Who is Chris Lundell?
A Former chief executive officer.
Q Okay. Of Complete Solaria?
A Of Complete Solaria.
Q And then moving back a couple of pages to little page number at the bottom 138, there is a signature at the top.

A Yes, I see that.
Q This is also signed by Chris Lundell, the chief executive officer of Complete Solaria?
A Former chief executive officer.
Q Okay. Do you believe this to be a true and correct copy of Complete Solaria's 10-K for fiscal year 2023?
A I do.
Q And you said you have reviewed it before and you are familiar with it?
A I am.
MR. KISSNER: I would move to admit into evidence the statement of a party opponent.
THE COURT: Any objection?
MR. BROWN: No objection.
THE COURT: The document is admitted.
(Complete Solaria 10-K received into evidence)
BY MR. KISSNER:
Q So, I would just like you to turn -- we are not going to spend a lot of time on this, but I would like you to turn, let's call it, about two-thirds of the way through there is a page number on the bottom, page 95. Let me know when you get there.
A I am there.
Q Do you recognize this page?
A I do.

Q Have you seen this before?
A I have.
Q What is this?
A Which section are you referring to?
Q Let's back up to page 94, how about the page prior.
A Legal matters.
Q Yes. So, fair to say this is a summary of significant legal matters pending against Complete Solaria as of the date hereof?
A Correct.
Q So, on page 95, the second section, Solar Park litigation. Do you see that?
A I do.
Q Do you know who Solar Park is?
A I do not.
Q You do not.
A No.
Q So, you have -- so, is it fair to say that you are unfamiliar with the Solar Park litigation?
A I am.
Q In that first paragraph it says:
"In January 2023, Solar Park Korea demanded approximately $80 million."
Do you see that?
MR. BROWN: Objection, Your Honor. The witness

testified he is not familiar with the litigation. The document speaks for itself.

THE COURT: What is your response?

MR. KISSNER: My response would be that he is a representative of the company. He says that he is familiar with this. He is testifying on their behalf. It seems reasonable for the CFO to testify about the contents of a 10-K.

MR. BROWN: He didn't sign the 10-K, Your Honor.

THE COURT: Look, the document is in evidence. You are going to be welcome to make whatever argument you want with respect to the document, but I am not sure questioning the witness with respect to litigation he doesn't know about is, otherwise, appropriate. So, the document is in. You will have a chance to be heard about what it says, but I'm not sure this is the forum.

MR. KISSNER: Okay. Fair enough.

BY MR. KISSNER:

Q Can we go down to the bottom section of this page, you see Siemens litigation.

A I do.

Q Now you know who Siemens is, right?

A I do.

Q Who is Siemens?

A Large manufacturing electronics company.

Q Okay. Are they -- do you have an understanding of their relationship to Complete Solaria?
A Base level, but not detailed.
Q To the extent of your understanding what is the nature of their relationship with Complete Solaria?
A I believe entity, Solaria, had a manufacturing panel agreement with Siemens.
Q Okay. Are you aware that Siemens filed a lawsuit against Complete Solaria?
A I am.
Q Do you know anything about that lawsuit?
A That would be a question for our general counsel.
Q That's fair.
Do you know at a high level the gist of the lawsuit, what Siemens was accusing Complete Solaria of?
A It predates me. I am not super familiar with the case to be quite honest.
Q And then just last question, do you know if Complete Solaria was found liable to Siemens?
A Yes.
Q You can put away the 10-K for now.
Could we turn back to your declaration, to page 3, Paragraph 6.
A Okay.
Q The final sentence of Paragraph 6 says:

"Complete Solaria is well positioned in the industry and has ample experience through the preservation of its own intellectual property to preserve and maximize the value of the SunPower marks following its acquisition."

Do you see that?

A I do.

Q So it's your understanding that Complete Solaria, I'm paraphrasing, its experienced enough, it knows what its doing and so its going to be able to adequately exploit and maintain the trademark. Is that the gist of this?

A Correct.

Q What is the basis for that understanding?

A I am trying to understand your question. What are you -- can clarify for me?

Q Sure. So, maybe we can back up to the first paragraph of your declaration.

A Okay.

Q The second sentence you say:

"I'm over 21 years of age and I make this declaration based off my personal knowledge and participation in Complete Solaria's efforts to purchase certain assets from SunPower Corporation and its affiliated debtors."

Do you see that?

A I do.

Q Okay. And how long did you say you have been with

Complete Solaria?

A Approximately two and a half months.

Q So, I guess what I am trying to figure out is what, during the past two and a half months, gave rise to your understanding that Complete Solaria is well positioned in the industry, has ample experience through the preservation of its own intellectual property to preserve and maximize the value of the SunPower marks.

A Well, part of that is based on the acquisition of SunPower, if I am being completely honest.

Q Okay.

A It's a transformative acquisition for the company.

Q Okay. Can we go to the next paragraph, Paragraph 7. The second full sentence you say:

"In particular, Complete Solaria has the necessary resources, expertise, and intention to fulfill and honor all the obligations set forth in the BFA."

Do you see that?

A I do.

Q And you said you have read the BFA?

A Yes.

Q And you are familiar with the obligations thereunder?

A I am.

Q I want to take this statement and I want to, sort of, break it up. So, you say that "Complete Solaria has the

necessary resources to fulfil and honor the obligations under the BFA," right?

A I do.

Q What resources are those?

A The 1,300 employees we are going to acquire with the acquisition, the capital that we have raised for the deal to move forward, the two principle legs.

Q Okay. And expertise, what is the expertise that Complete Solaria has?

A The amount of folks that we have got internally plus those that we are bringing on board have, I think, ample experience in marketing and branding.

Q Then intent to honor and fulfill. I think that is easy, but anything special meant by that?

A Just normal course of business. We have got some very bright people.

Q Okay. And so, you have talked about these 1,300 employees, right?

A I have, yes.

Q And its also talked about in Paragraph 8 of your declaration, right?

A Yes.

Q In Paragraph 8 you say:

"Complete Solaria has commenced a process of interviewing existing employees of the debtors."

What does that mean to your knowledge, commenced a process of interviewing?

A So, we are interviewing individually all of the employees that are coming over to Complete Solaria.

Q 1,300 of them?

A All 1,300.

Q Okay. Sounds like quite the process.

A It is.

Q I'm glad I'm not part of that.

Have you made any job offers to any of these 1,300 employees?

A Contingent job offers.

Q Is there anything in the APA that requires you to employ 1,300 employees?

A That I am not aware of.

Q Are you aware of anything in the APA that requires you to employ any employees?

A I am not. I can't swear for certain that it is or is not in the document.

Q Do you know if you have committed anywhere in a writing that you are, in fact, going to employ 1,300 employees?

A Yes. I believe some employees have received contracts.

Q Do you have a sense of about how many?

A I do not.

Q Not 1,300, fair?

A Not all 1,300, no.
Q I have one more.
May I approach again, Your Honor?
THE COURT: You may.
BY MR. KISSNER:
Q Do you recognize the document I have handed up to you?
A I do.
Q What do you recognize it to be?
A It looks like it's a transcript form our 2-Q quarterly conference call.
Q Okay. And you were a participant on this conference call?
A I did not speak on the conference call, so define participant.
Q Okay. You see at the top there is a list of participants and your name is there, right?
A Correct.
Q And then who is T.J. Rodgers?
A T.J. Rodgers is the chairman and CEO of the company.
Q Fair to say that T.J. Rodgers is a representative of Complete Solaria?
A He is.
Q He has the ability to bind Complete Solaria?
A He does.
MR. KISSNER: I am going to offer this into

evidence as a statement of a party opponent.

THE COURT: Any objection?

MR. BROWN: Your Honor, I don't really -- yes, I object to the admission.

THE COURT: What is your basis?

MR. BROWN: On the basis that its hearsay. On the basis that its not certified. I don't believe --

THE COURT: So, the witness identified it as a transcript of the call and it seems to me that your client is, essentially, a party opponent with respect to these matters just as you acknowledge with respect to the admission of the prior document. So, why isn't it an exception to hearsay on the ground that it's a statement of a party opponent.

MR. BROWN: It may be, but its not a certified transcript of the call, so --

THE COURT: Does it need to be in order to satisfy the exception to the hearsay rule?

MR. BROWN: I will reserve that for redirect, Your Honor.

THE COURT: Okay. Very well. So, the document will be admitted.

(Quarterly conference call minutes received into evidence)

MR. KISSNER: If it helps, for the record, I will

stipulate that we are not -- I am not going to seek to admit the statements of operator whole farmer VP of sales. I am really just focused on Mr. Rodgers remarks.

THE COURT: Okay.

BY MR. KISSNER:

Q So, on page 1, Mr. Foley, could you go down to the full paragraph at the bottom of the page?

A Yes.

Q This is a statement of Mr. Rodgers, right? This is him talking rather.

A It is.

Q Okay. He says:

"Our bid is $45 million for "certain assets" so this is not about buying the company, buying everything in it, taking over groups of people, its about assets that we want to brin to Complete Solaria."

Do you see that?

A I do.

Q Do you have an understanding as to what Mr. Rodgers meant by that?

A I think you would have to ask him.

MR. BROWN: Objection, Your Honor; speculation.

MR. KISSNER: I just asked if he had an understanding. It’s a yes or no question.

MR. BROWN: It calls for speculation.

THE COURT: No. If he has an understanding that's something he can testify with respect to his knowledge.

MR. BROWN: Thank you, Your Honor.

THE COURT: I'm sorry, if you could answer yes or no to whether you have an understanding.

THE WITNESS: No.

BY MR. KISSNER:

Q Do you have an understanding, generally, of Complete Solaria's financial results for Q-2 2024?

A I do.

Q How would you characterize those results?

A I am not trying -- I am trying to understand what this pertains to. So, can you help me here?

Q Sure. So, you have an understanding as to the operating results for Complete Solaria for Q-2 2024, right?

A Yes.

Q I just want to know how would you characterize them if I asked you at a party, if I said how is Complete Solar doing in Q-2 2024, what would you say?

A Well, the prior quarter of the company had run out of cash due to a dispute with the debtors. That was resolved, so the company was restarting in Q-2.

Q Did it turn a profit?

A It did not.

Q Did it have operating losses?

A It did.
Q Were they extensive?
A Qualify extensive.
Q Were they small, were they big?
A Relative to a company its size, order of magnitude, I mean that is a very broad question.
Q Okay. Fair.
Can we turn to page 4 of this transcript, about halfway down the page.
A Okay.
Q To be clear, this is still Mr. Rodgers talking, right? I just want to make sure I didn't lose my place.
A Correct.
Q You see in the middle of the page he says:
"So, this is has been a disaster."
Do you see that?
A I do.
Q Do you have an understanding as to what he is referring to as a "disaster?"
A Let me read the paragraph before.
THE COURT: I apologize, you just lost me. What page are you on?
MR. KISSNER: Its page 4.
THE COURT: Got it.
MR. KISSNER: Fifth paragraph down.

THE COURT: Got it. I apologize, you can continue.

MR. KISSNER: Not at all, Your Honor.

THE WITNESS: I see it.

BY MR. KISSNER:

Q Do you have an understanding as to what he is referring to as being a "disaster?"

A Yeah, I believe he is referring to the financial results.

Q Would you agree with Mr. Rodgers that the financial results for Complete Solaria were a "disaster?"

A I would not.

Q You would not, why is that?

A The company had gone through a pretty tough period and emerged on the other side with fresh capital courtesy of T.J. Rodgers. So, from a positional standpoint the company was in much better shape then it had been in the prior quarter. So, I would not have referred to it as a disaster.

Q Fair enough. Two paragraphs down there is another, it begins "I will make one comment here." Do you see this?

A I do.

Q He says:

"This number, if you are an operating guy like me, you tee off in that number and talk about it for the next two hours. It’s a horrible number."

Do you see that?
A I do.
Q Do you know what number he is referring to?
A I don’t.
Q Is it maybe cash flow?
A I do not know.
Q Would you agree that there are a lot of "horrible numbers" in connection with Q-2?
A I would not.
Q You would not.
A No.

MR. KISSNER: Thank you very much, Mr. Foley. I have no further questions.

THE COURT: Before we turn to redirect, is there any other -- well, actually, is there any other party in interest that wishes to cross-examine the witness?

(No verbal response)

THE COURT: Okay. If not --

MR. STEARN: Your Honor, if I might. I'm sorry, Bob Stearn from Richards Layton & Finger. I am going to have two questions for the witness, probably more appropriately --

THE COURT: That’s fine.

MR. STEARN: I just wanted to --

THE COURT: That’s fine. Mr. Brown, redirect.

MR. BROWN: I was going to ask for a five-minute

recess, Your Honor.

THE COURT: That seems like a fair ask. The witness is, of course, on the stand.

THE WITNESS: I can't talk?

THE COURT: I'm sorry.

THE WITNESS: I can't talk?

THE COURT: No.

(Laughter)

THE COURT: Okay. So, you remain on the stand. So no one can talk to the witness about his testimony. So, its now 11:15, why don’t we give you 10 minutes and we will come back at 11:25. Until then we are in recess.

MR. BROWN: Thank you, Your Honor.

(Recess taken at 11:15 a.m.)

(Proceedings resumed at 11:26 a.m.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Please be seated.

So, Mr. Brown, before we -- before you kick off, I actually want to correct a ruling I made. So, let me back up because if Mr. Kissner wants to be heard on this, I want to give him that chance. It seems to me that Mr. Brown was right and that under Rule 804(b)(3) the statement -- I'm sorry, (b)(1), the exception to the hearsay rule for a statement of a party opponent does have a requirement that it be recorded. I think Mr. Brown was right about that.

I don’t think that I need to strike any of the testimony because to the extent you were asking the witness -- the witness was on the call, so to the extent you were asking the witness about what he understood, I think that is fair testimony but I think the document itself is not properly admitted, but if you think I'm wrong about that let me give you the chance to tell me.

MR. KISSNER: Thanks, Your Honor. For the record, again, Andrew Kissner of Morrison & Foerster.

Where in the rule are you, 803?

THE COURT: Right. So, the exception, I take it, is that you said he was a party opponent which I assume is 804(b)(1).

MR. KISSNER: So, it's actually in the definition of hearsay itself. Its in 801(d), statements that are not hearsay.

THE COURT: Okay. Let's go back and look at that. That is a declarant witness or that’s (d)(2).

MR. KISSNER: (d)(2), an opposing party statement is offered against an opposing party and it was made by the party of an individual representative capacity. We laid the foundation that Mr. Rodgers is a representative of Complete Solaria.

THE COURT: I see. That is helpful. So, you are saying its outside the definition of hearsay under 801(d)(2).

Mr. Brown, do you dispute that? This was the basis, at some level, for my original ruling. I just want to get it right.

MR. BROWN: No. I don't dispute that, Your Honor. I do dispute that its authenticated.

THE COURT: And --

MR. BROWN: Its not a certified transcript of a call if its not signed by anybody as being complete and accurate. Its --

THE COURT: So, I took the -- the witness testified that he recognized it and there is no reason, on its face, it doesn't appear to be what it is. So, I will overrule that.

So, I will go to where I was. The document is admitted. The testimony all stands. Thank you for that correction. Apologies for needing to work through that, but more important to get it right.

MR. KISSNER: Its important we get it right. Thank you, Your Honor.

THE COURT: Mr. Brown, let me give you the chance to redirect.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Good afternoon, Mr. Foley. Stuart Brown, DLA Piper, on behalf of Complete Solaria.

Let's start with this document. I don't know if its been marked 3, maybe, the transcript.

A Yes.

Q Have you read through this ever before?

A I have not.

Q And when counsel asked you to identify -- previously in your testimony you -- how did you identify it? What was the basis for your identification?

A My basis is the identification was the title in the first page.

Q When --

A If I may add, I did not get a chance to review this. You are correct, this is not, in my opinion, a final transcript.

Q I will move on. Thank you.

Counsel asked you questions about your opinion about the results of the second quarter of 2024. Do you recall that testimony?

A I do.

Q And you testified that you didn't believe that all of the numbers were "horrible" for Q-2, is that right?

A Correct.

Q Was Q-2 the basis for the company's ability to raise any money after Q-2?

A It was not.

Q Has the company raised any money following or after Q-2 beginning July 1st?
A We have.
Q How much has the company raised and under what circumstances?
A So, we had a July offering which was, essentially, a restructuring of the old debt into new debt, new convertible debt, and then we just raised an additional $66 million of convertible debt in regards to this acquisition.
Q And does the company presently have cash on hand?
A It does.
Q How much cash on hand does it have?
A The company currently has $12 million of cash on hand plus the $66 million that we just raised that is in escrow.
Q Does the company have prospects to raise additional capital in the future?
A We do.
Q Can you describe that?
A Yes. So, we have an equity line of credit with an availability today of $27 million. And we also intend to file a shelf registration post the acquisition.
Q I will ask you to look at page 4 of the supposed transcript.
A Yup.
Q The second to bottom paragraph, in the middle there is

a sentence that says:

"We are excited to clean up and get rid of some of the old logs, old jobs in the line, and get rid of some old inventory, and decided to take the hit."

Do you know what that refers to?

A I do.

Q Can you explain it?

A Yeah. So, we have been in the process of for anything that is sort of old jobs, old stuff as, what T.J. refers to, our FAB, but really sort of jobs in process. We have decided to clean a lot of the old jobs out, to clean up the books.

Q The paragraph above, the second to bottom line it says:

"After we paid off our old debt and paid off our accounts payable to key vendors, we had $26 million left."

Do you see that?

A I do.

Q Can you explain what that refers to?

A So, the -- when we did the restructuring of the debt in July, we brought around $30 million of cash on the balance sheet. The time of the call was around $26 million. Subsequent to that we had continued to pay down our vendors and we're almost clear of all of our vendors with the exception of a few tiny amounts.

Q So, you said you have raised $46 million and you've raised some additional capital and you have got prospects to

raise even more. After you pay the purchase price, is it $45 million?

A Correct.

Q How much cash will the company have or how much in commitments will it have for additional capital raised?

A So, its $66 million with an additional $14 million.

Q Less $45.

A Less $45 -- incorrect, less $40 and a half. I have already put $4 and a half million down in a deposit.

Q Thank you for that clarification.

Do you have the declaration -- your declaration in front of you. I believe its Exhibit 1.

A I do.

Q Paragraph 3, please. Third to the bottom line it says:

"Coordinating with Maxeon on brand assets, strategy and other matters that implicate SunPower brand."

Do you see that?

A I do.

Q What does that mean, "coordinating with Maxeon?"

A So, under the BFA, the prior BFA with SunPower as I understand it, they had agreed to coordinate their marketing efforts together.

Q So, if the two companies do coordinate, they have alignment in preserving and enhancing the value of the marks, is that right?

A They do.

Q Does Complete Solaria have sufficient employes to purchase these assets without hiring employees of the seller?

A We do not.

Q Is it your intention to hire as many employees as you need to make sure that the purchaser is successful post-closing?

A It is.

Q Following the closing, is it your understanding and belief that Complete Solaria will be positioned for the future to succeed?

A It is.

MR. BROWN: I have no further questions, Your Honor.

THE COURT: Okay. Mr. Stearn.

MR. STEARN: Thank you, Your Honor. Once again, Bob Stearn on behalf of the debtors.

REDIRECT EXAMINATION

BY MR. STEARN:

Q Following Mr. Brown's very helpful redirect I just have one general question for you, sir, which is would Complete Solaria purchase the SunPower business at issue if it didn’t believe it had the financial and intellectual wherewithal to run it successfully and legally?

A We would not.

MR. STEARN: Thank you, sir.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Stearn.

Mr. Kissner, you can -- do you have re-redirect?

MR. KISSNER: Thank you, I have a brief recross.

RECROSS-EXAMINATION

BY MR. KISSNER:

Q Do you still have the -- and for the record, Andrew Kissner, Morrison & Foerster. Do you still have the transcript in front of you?

A I do.

Q Okay. Just to make sure I have this right, so at the top there is a list of participants and Dan Foley, CFO, is listed there, right?

A Correct.

Q You said you didn’t actively participate on the call, but you were on the call, right?

A I was.

Q And you have been through this transcript, does this seem to comport with your recollection of the call?

MR. BROWN: Objection, Yor Honor. It mischaracterizes the prior testimony as well as --

THE COURT: So, the question is does it comport with your recollection. So is there any reason he can't answer that question?

MR. BROWN: No, I think he can.

THE COURT: Okay. You can answer that question.

THE WITNESS: Yes.

BY MR. KISSNER:

Q So, at the bottom of page 1, that last paragraph where Mr. Rodgers begins with saying:

"And our bid is $45 million for certain assets, its not about buying the company, buying everything in it, taking over groups of people; its about certain assets that we want to bring to Complete Solaria."

Do you see that?

A I do.

Q Do you recall Mr. Rodgers saying that?

A I do.

Q So, you have no reason to believe that he didn't, I will phrase it that way?

A I do not.

Q Okay. Then on page 4, and setting aside you disagree with his characterization of the results, do you recall him saying "this has been a disaster?"

A I do, but I would qualify it with we managed to actually reduce our operating losses during this period and now have plenty of leverage. When we come back to this number we will better and more profitable then we were when we hit $20 million the first time.

Q I am going to move to strike everything after "Yes, I do recall."

THE COURT: I guess I will strike that as non-responsive. The document is in evidence so this is sort of angels dancing on a head of a pin, but I think you are technically correct.

BY MR. KISSNER:

Q Then when he says "it's a horrible number" do you recall him saying that?

A I do and I still disagree with it.

Q That's fair.

Finally, on the last page the third full paragraph from the top, T.J. Rodgers, and it starts with "yeah." Let me know when you are there.

A I'm there.

Q Okay. And he says:

"When Maxeon split out of SunPower they got the rights to put SunPower on their products. Obviously, they had to have that. They split out and they had to be able to use their same manufacturing name, so there is a cloud over the use of the word or the use of the trade name SunPower and its contractual and its real."

Do you see that?

A I do.

Q Do you recall Mr. Rodgers saying that?

A I do.
Q So, you have no basis for thinking he didn't, in fact, say that?
A I don’t, no.
Q Okay. And your disagreements with Mr. Rodgers aside, does Mr. Rodgers have an understanding of the company's financial performance?
MR. BROWN: Objection. There is no basis for this witness to know if Mr. Rodgers understands (indiscernible) --
THE COURT: He can answer the question whether he knows what Mr. Rodgers thinks.
THE WITNESS: I wouldn’t want to speculate for Mr. Rodgers.
BY MR. KISSNER:
Q Okay. Do you think he has an understanding of the company's financial operations and results?
A I do.
MR. KISSNER: Thank you. No further questions.
THE COURT: Okay.
MR. BROWN: Just one question.
THE COURT: Yes.
MR. BROWN: Maybe two.
THE COURT: Mr. Brown, you are welcome to examine the witness.
MR. BROWN: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. BROWN:

Q Please turn to page 4 of the transcript. You were testifying about what is the fourth full paragraph, is that right?

A Correct.

Q What were you about to tell us that will be responsive to my question, but maybe not other counsel's question.

A Yeah, so what I was trying to get across was even though T.J. says it was a "disaster" I disagree because there was material improvement in the operating income of the company because of an expense reduction that had occurred and the real work that had been done internally to reduce operating expense so that when the company emerged from the prior debt issue it would have leverage to move upwards which is halfway now occurring.

Q The date of this transcript or this call of which this is a transcript was, what's the date?

A August 14th, 2024.

Q And were you employed by Complete Solaria on that date?

A I was.

Q Based on your observations of Complete Solaria's performance since your employment have you seen an upward trajectory of its prospects?

A I have.

MR. BROWN: No further questions, Your Honor.

THE COURT: Thank you. Any other party in interest have any further questions for the witness?

(No verbal response)

THE COURT: Thank you for your testimony. You can step down.

(Witness excused)

THE COURT: Mr. Stearn.

MR. STEARN: Good morning still, Your Honor. Just need to round out the evidentiary record. We would like to introduce one document into the record for purposes of, essentially, arguing the Maxeon objection. That is the brand framework agreement. Its attached to our reply. I can also hand up a copy, whatever is most convenient for Your Honor.

THE COURT: I have your -- actually no harm in having a physical copy.

MR. STEARN: Just because I have so many and you have several nice folks in front of you, I am going to hand up three.

THE COURT: Very well. Thank you very much.

MR. STEARN: Thank you, Your Honor. So, we would respectfully move the brand framework agreement into evidence as Debtors' Exhibit 1, I guess.

THE COURT: Any objection?

UNIDENTIFIED SPEAKER: No objection.

THE COURT: Okay. The brand framework agreement will be admitted.

(Brand framework agreement received into evidence)

MR. STEARN: Thank you, Your Honor. I will turn it over to my colleague, Mr. Collins, I think, at this point -- no, I won't, I will turn it over to someone else.

THE COURT: Very well. I'm happy to hear from whoever wants to help me.

MR. STEARN: Thank you.

THE COURT: Thank you, Mr. Stearn.

MR. JACOBSON: Good morning, Your Honor. Rob Jacobson, Kirkland & Ellis, on behalf of the debtors.

So, how I would propose to proceed is to talk a little bit about the two asset sales. I will start first with the SunStrong sale because I think they will move quickly and then go to the going concern Complete Solaria sale.

So, this morning we filed a revised agenda which shows that the debtors spent their time wisely over this weekend and this morning resolving as many objections as we possibly could, that effort was successful. As I will preview later, we were able to resolve the Taylor Morrison objection. I will get to that when I talk about the Complete Solaria sale. So, that just leaves the Maxeon objection.

So, turning towards the SunStrong sale just to highlight a few points for the record on September 17th,

pursuant to the bidding procedures, the debtors filed a notice of winning bidder and announced that Goodfinch and HASI were the winning bidders for the SunStrong assets. The winning bidder notice is filed at Docket No. 546 and that notice also attaches the form of the asset purchase agreement.

On Septembrer 19th the debtors filed the SunStrong sale order and that is at Docket No. 546. Last night we filed a further revised order at Docket No. 590 which included a redline that highlighted a few key changes that resolved informal comments that we received for the SunStrong sale order.

We also filed a further revised order, I think, actually during this hearing and that is at 596. That includes a couple of tweaks that we made really to the Cigna objection. That was our miss, we missed including a paragraph, so we got that in this morning and we believe that resolves Cigna's objection.

One other thing to flag about the order we received during the hearing this morning, just one minor comment related to Paragraph 28, and that is the paragraph that deals with books and records of the debtors in relation to what we call the service assets, so some of the assets that are going to go over pursuant to the sale. We just need to take that language, talk about what the purchaser is and

everyone's respective clients. We fully expect to come back, file a revised form of order shortly after the hearing.

THE COURT: Okay. For the record, to the extent things had been filed during the hearing I haven't read them.

MR. JACOBSON: Yes. Fair enough. I completely understand that, Your Honor.

So, Your Honor, the revised form of order it reflects all comments received, all objections have been resolved with respect to the sale. So, we would respectfully request at this time entry of the sale order subject to us filing a further revised order under certification of counsel.

THE COURT: Is there any party in interest that objects? This is the SunStrong sale, right?

MR. JACOBSON: Yes, Your Honor.

THE COURT: Is there any party in interest that would like to be heard in opposition to approval of that sale?

(No verbal response)

THE COURT: Okay. Seeing none, subject of course to my actually looking at the order, and certainly the absence of any objection, I am satisfied that the debtors ran an appropriate process, exercised its reasonable business judgment, and we will enter an appropriate order.

MR. JACOBSON: Thank you, Your Honor.

So now turning to the complete Solaria sale. The sale, as we have mentioned a number of times, is the cornerstone of these Chapter 11 cases. On September 16th the debtors filed a winning bidder notice which announced Complete Solaria as the winning bidder for the going concern assets. The winning bidder notice is filed at Docket No. 398 and that notice also attached a copy of the asset purchase agreement.

On September 19th we filed a sale order at Docket No. 545. Then yesterday we filed a revised form of order at Docket No. 592 that attached a redline as well showing the changes that we had made over the course of the weekend to resolve objections. This morning, we filed a signed contract schedule and that lists -- that schedule is attached as Exhibit 2 to the sale order and is filed at Docket No. 594. We also, I believe during this hearing, filed a revised sale order with some minor tweaks as well to resolve some further comments related to language that we included in the sale order to deal with the surety bond issues. That has all been agreed. Its been filed at Docket No. 595.

THE COURT: Okay. So hold on a se cond. So, that is helpful to understand. So, the objection that we had from the insurer that has now been resolved.

MR. JACOBSON: Which insurer?

THE COURT: The surety bond insurer.

MR. JACOBSON: Yeah. All the surety bond issues have been taken care of in the sale order.

THE COURT: Okay. Very helpful. Thank you, Mr. Jacobson.

Can I ask this question, not to interrupt the presentation, are you aware of an objection to the Complete Solaria sale other than the Maxeon objection?

MR. JACOBSON: Just to -- well, no, I am not.

THE COURT: Okay. Let me let you continue. That is helpful for me to wrap my brain around.

MR. JACOBSON: I have had a bunch I have been going through all weekend.

THE COURT: I get it, everyone is working very hard. So, I appreciate it.

MR. JACOBSON: Thank you, Your Honor. So, as I'm sure you are aware, we received a bunch of cure objections. So, I just want to briefly talk about assigned contracts just to clear up any confusion for folks listening on the line.

On September 4th we filed our cure notice. We also served it. We did that over two filings and that is at Docket No. 304 and 305. On September 10th, in accordance with the bidding procedures, we also filed the supplemental cure notice. Also, in accordance with the bidding procedures, the debtors served an adequate assurance package from Complete Solaria and that was served on each of the counterparties who

at the time were contemplated to potentially be going over to Complete Solaria in connection with this sale.

With respect to the cure objections, you know, once we received them, the debtors have contacted each of the cure objectors to adjourn the hearing on the cure objections to October 7th and that has been reflected in the revised agendas that we filed in advance of this hearing. And as I mentioned, we received approximately 55 cure objections, but I want to point out that is set forth on Exhibit 2.

The debtors are only proposing to assume and assign contracts for approximately about 10 of the contact counterparties related to those 55 objections. So, the universe of objections that we need to resolve for purposes of cure in relation to this sale is very, very small compared to what has been filed.

I also want to just be clear that Paragraph 18 of the sale order preserves the rights of contract counterparties who have filed timely objections to the proposed cure amounts, assumption and assignment, and adequate assurance of future performance. So, Paragraph 18 seeks to preserve those and hopefully we will resolve all issues in advance of October 7th.

I just want to point out, because we have just a small error on the agenda, that the rights of Tri-Pointe, New Home Company, and FH2 Home Builders who filed objections

respectively at Docket No. 533, 532, and 527. Their rights are reserved as well. I think we had marked on the agenda that those objections were fully resolved. What we meant to say was that they -- parts of them were resolved by language in the sale order. The cures will be heard on the 7th if necessary.

THE COURT: Okay.

MR. JACOBSON: Last thing to point out about contracts is that on Exhibit 2 we were very careful to notate on a line item by line item basis which contracts are subject to timely objections that will be continued to October 7th and we thought that was just important to notate on the schedules so that there was no confusion for folks.

Now, let me turn to the Taylor Morrison resolution. The debtors, the purchaser, and Taylor Morrison have worked to come to a resolution on the objection. We were happy to do so this morning. I am going to read a quick blurb into the record and then happy to answer any questions about it.

So, to resolve the objections of Taylor Morrison, filed at Docket Nos. 482 and 560, the debtors, Taylor Morrison and the purchaser have agreed that they will enter into a joint stipulation to reject the debtors contracts with Taylor Morrison on an expedited basis so that the Court may enter an order approving such stipulation by Friday,

September 27th, 2024. As soon as reasonably practicable, the debtors shall file a revised assigned contracts list, which is Exhibit 2 to the sale order, that shall remove the Taylor Morrison contracts from the assigned contracts list.

From the date hereof until the entry of the order approving the stipulation and providing for the rejection of the Taylor Morrison contracts, the debtors consent to lift the automatic stay solely for the limited purpose of allowing Taylor Morrison to find replacement vendors, including equipment, installers, and other replacement vendors, to complete ongoing projects.

THE COURT: Okay.

MR. JACOBSON: So, that is our resolution, Your Honor. We will anticipate filing the stipulation imminently and then we are hopeful to have that entered on an expedited basis if Your Honor permits.

THE COURT: We will do our best once that comes through.

MR. JACOBSON: Thank you, Your Honor.

So, now the last thing to talk through are the Maxeon issues and I will cede the podium to our colleagues at Richards Layton to take us through that.

THE COURT: Before we go there, let me ask this question: Is there any party in interest other then Maxeon that objects to the Complete Solaria sale?

(No verbal response)

THE COURT: Okay. So, we are down to that issue. Very well. I am happy to hear from whoever can help me get this right.

MR. JACOBSON: Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Jacobson.

Mr. Collins.

MR. COLLINS: Good morning, Your Honor. For the record, Mark Collins of Richards Layton & Finger on behalf of the debtors.

Given that its Maxeon's objection I will turn the podium over to them to present their objection and then I will reply.

THE COURT: Very well.

MR. COLLINS: Thank you.

THE COURT: Thank you.

MR. KISSNER: Good morning, Your Honor. For the record, Andrew Kissner of Morrison & Foerster on behalf of Maxeon.

One housekeeping item, actually, you previously moved the brand framework agreement into evidence.

THE COURT: I didn’t move anything.

MR. KISSNER: Okay. Sorry, the debtors had moved into evidence. My understanding from the client is that that version that was admitted it might not have the right

schedules on it. I am not sure that it becomes a material fact today, but I would suggest that just for clarity of the record perhaps after the hearing we can meet and confer and figure it out.

THE COURT: The parties can do that, that's fine. I take it the provisions that are at issue today are the provisions that we have got.

MR. KISSNER: That is correct, but conceivably the ruling today could impact rights to certain trademarks and so the inaccuracies might actually have to do with the trademarks that are listed. So, just important going forward.

THE COURT: Very well.

MR. KISSNER: So, I would like to start maybe with first principles and I am assuming that Your Honor has reads through the papers. So, you understand where we sit. I think it's really important and, candidly, I hope helpful to sort of start at the beginning.

There is a SunPower brand name and there are associated trademarks, and the parties and the contract refer to those as the SunPower marks. There was a document, it was the brand framework agreement, and it was entered into in connection with the spinoff. The brand framework agreement it, essentially, split these marks in two. It was an asset, it was once held by one combined entity and then when Maxeon

was spun off they were now two entities. They were charting their own path and the brand framework said, hey, you guys can each use these marks in different parts of the world and then when you are done with it you have to give it back.

So, the effect of that, as a matter of property law, is that there is a couple. First is that what SunPower got was a qualified ownership of the SunPower marks. What do I mean by "qualified." Well, qualified is in contrast to the idea of absolute ownership, right. I absolutely own this pen, right. I can use it, I can write with it, I can sell it, I can throw it out if want to. Nobody is going to come after me and they can't because its mine, it belongs to me. That is absolute ownership.

There is also qualified ownership and qualified ownership that means that, yeah, you might have titles to something, you might have possession of it, you might even have a usufruct, you are able to use it, I have always liked that word, but you are not an absolute owner. You ownership and enjoyment of it its either limited in time, in use, or its split with another person. So, if we look at the rights that were created in the SunPower marks, vis-à-vis SunPower, they were qualified and actually in all three senses.

THE COURT: Right. So, I get the bundle of sticks point. I am with you that far. Where I think your work is, is explaining to me why the rights that the debtor has in

12.2 aren't part of the bundle of sticks.

MR. KISSNER: Sure. And I am happy to go there now or I am happy to get there in due course.

THE COURT: Whatever works for you.

MR. KISSNER: Okay. I won't keep you in suspense for too long, but I will get there. So, it's a limited bundle of sticks to use the old analogy.

THE COURT: I'm old.

MR. KISSNER: No comment.

THE COURT: More so every day.

(Laughter)

MR. KISSNER: More so after this morning, I'm sure.

So, that is SunPower's perspective. Then there is also a view from Maxeon's perspective, right, there is sort of this yin and yang, this converse relationship whereas SunPower has a qualified ownership. The necessary corollary of that is that Maxeon has a property interest, right. So, that property interest, it manifests itself in a couple of ways in this agreement but to be clear, with respect to these property interests this agreement isn't executory. Its already done its work.

When it was entered into back in 2021 the work was done. Maxeon was granted consent rights over a sale of the marks to any other party and it had a conditional future

interest, that is what it would be called if we were in a property class right now, in the marks. Conditional, why, because it wasn't absolute, it was triggered by another event that happened at some time in the future. Future, why, because it doesn't have possession of the marks right now. So, that is where the parties were before they entered into bankruptcy.

So, now we are in bankruptcy and we still have no property interests. SunPower still has qualified ownership. I think --

THE COURT: Can I ask you this question: If you are right about that why are you entitled to adequate assurance of anything?

MR. KISSNER: Well, adequate assurance or adequate protection?

THE COURT: Adequate assurance of future performance.

MR. KISSNER: If --

THE COURT: If this is not an executory contract --

MR. KISSNER: Oh, it's certainly an executory contract with respect to other obligations going back and forth, but in the sense that let's imagine that you had a contract, I don't know, bequeathing a house or gifting a car the language that says, you know, I hereby grant you an

ownership in my Audi Q5, right, that is already done. I have signed it, its over. We have moved past it.

If then in the next segment it says, by the way, in exchange for you taking it to get detailed, and getting the oil changed, in exchange for you agreeing not to take it out of the state without my consent, you know what I am going to do, I'm going to pay for the insurance, I am going to pay for the registration, I'm going to pay for the title.

THE COURT: I understand you could have a contract that both grants a property interest and contains executory obligations, but what the executory obligations that you owe that are being assigned such that you would be entitled to adequate assurance if not the underlying interest in the marks.

MR. KISSNER: So, there is a handful. Starting maybe backwards in the agreement, just because that is where I opened it to, you have the indemnification provisions in Article 11. I think that those, to the extent assumed and assigned by the debtor, that would be an unfulfilled promise and certainly they would feel entitled to sue us for breach if we didn't live by our end of the bargain. There are also non-exclusive trademark licenses that are granted.

THE COURT: I follow.

MR. KISSNER: So --

THE COURT: You have answered my question. Thank

you.

MR. KISSNER: And so -- but it's actually -- it's a good transition to, I think, where we are right now because they filed for bankruptcy, yes, but let's talk about what they haven't done, right? They haven't filed an avoidance action, right, under Chapter 5, seeking to claw back this property interest as a fraudulent transfer or a preference, and I think we're outside of the preference window. They haven't sought to rescind the contract, right? They haven't sought to make a showing under Section 363(h) to sell a co-owner's interest in a right. They haven't filed any sort of litigation actually challenging the validity of this contract. In the reply that was filed last evening, they start to make some noises about this being, you know, anticompetitive or an unlawful restraint on alienation, but, you know, that's just words on a page in a reply.

There's been no serious affirmative effort by them to undo this contract or really to take back what they gave us, right? It's ours. And so, where it stands, maybe when I sit down, I'll wake up and I'll see we got served with a, you know, 548 action, I don't know, but that's not where we are now, right? And so what I think the line of unbroken precedent going back to before there even was a Bankruptcy Code says is that, if you have a contract and it's granted a property right, the fact that you enter into bankruptcy, the

fact that you enter into the land of broken promises, doesn't take it back.

THE COURT: So I'm with you in the Chicago Board of Trade point, I'm with you that far.

MR. KISSNER: Okay. And so here's another thing they haven't done, right? They haven't sought to reject the contract either. We don't have to get into rejection because it's not a live issue, but the fact that they haven't sought to reject it, they're in fact seeking to actively assume it and assign it, right? And so this sort of leads to the circularity that sort of makes my brain hurt, right, is that one of the conditions under 365 for assumption and assignment of a contract, you brought up adequate assurance, another thing that you have to do is you have to cure defaults, you have to cure existing defaults, right?

And I don't think, until they are successful in either rescinding the contract or declaring it void, I don't think that there's really a reasonable basis to argue that their intention to sell the marks, in violation of 4.5, and their failure to honor the ROFR rights, those are breaches of the contract, right? They have --

THE COURT: So now help me with 12.2.

MR. KISSNER: Sure.

THE COURT: So that -- I mean, I candidly was surprised that you filed an objection that made no mention of

it.

MR. KISSNER: Okay, that's fair.

THE COURT: So -- and you've now spent 15 minutes not talking about it. So can you tell me what your answer is?

MR. KISSNER: Yeah. So my answer is that there's a difference between the contract and the underlying property right, right?

And so let's look at 12.2 says. 12.2 sets forth a rule and it sets forth an exception, right? And so here's the rule: This agreement may not be assigned by either party without prior written consent. Here's the exception: Notwithstanding the foregoing, either party may assign this contract under various circumstances.

And there can be a debate as to whether those circumstances are met, and maybe we'll get there --

THE COURT: Okay.

MR. KISSNER: -- maybe we won't, right? Okay.

This is the language: This agreement may not be assigned. This is about the ability to assign an agreement.

Let's look at Section 4.5, right? Again, there's a rule and there's an exception. And let me know when you're there, Your Honor.

THE COURT: Okay.

MR. KISSNER: And so 4.5 says -- and again, here's

the ruling: "Neither party shall, unless approved by the parties of the brand council sell" -- dot, dot, dot -- "or otherwise dispose of any of its right, title, or interest in or to any of the SunPower marks."

THE COURT: Right. 12.2 speaks specifically to what happens if there's going to be a sale of substantially all, that's the more specific provision, it speaks to this problem. So explain to me why that doesn't control over the general version.

MR. KISSNER: Because 12.2 talks about assignment of a contract, not a transfer of the underlying marks, and there's a difference between this brand framework agreement that talks about what the parties can or cannot do with these property interests and actually selling the underlying property itself.

To go back to the analogy that I used before, right, where we agree to split usage of my car, right? I can't -- maybe I can transfer to a friend or to an assignee or a successor the obligation to pay the insurance, pay the title fees, do all this stuff as long as the judge, you know, takes it to the car wash and takes good care of it, right? But me assigning that contract isn't effect -- it isn't effective to actually transfer title to the car, right? If you went to DMV and you said, hey, I have this executory contract from Mr. Kissner, they'd say, okay, I can't register

this car in your name.

And so I'm not trying to be facetious, I just --

THE COURT: No, look, I understand the notion, the philosophical notion, the difference between a contract right and a property interest. To be candid, the distinction approaches the philosophical pretty quickly, right? Because any property interest could be reconceptualized essentially as a covenant not to sue and exactly how that distinction works is pretty complex. What we've got is essentially a question of whether this agreement should be understood, when you see 12.2, to be limited to not all of the rights acquired under the contract, but just the executory rights that remain in the hands of the parties. And that's not conceptually impossible, but it doesn't strike me as commercially the most likely.

MR. KISSNER: I respectfully disagree; I see it completely differently. And I think the plain language of the contract actually supports it. And part of why we didn't address it in our sale objection is that I was honestly shocked that they suggested that 12.2 that, again, relates to assignment rights of a contract could somehow -- and, by the way, the general provision, right, this contract cannot be assigned unless this boilerplate somehow supersedes the specific right, specific right -- and this is a mutual right -- and it's not about rights in general, right, it's not

about assignment of the contract, this is about the sale, assignment, transfer, license, or disposal of right, title, or interest in or to the SunPower marks, right? That is a specific subset of the assets that are actually governed by this agreement, and so it would read 4.5 out of the contract. And I think it also --

THE COURT: No, it wouldn't. It would apply in every single case except for the limited circumstances and it's 12.2 applies. So you couldn't just decide I'm going to sell this and stay in business, you couldn't just sell this without one of the specific events in 12.2 applying. So there's plenty of work to do in 4.5 even if 12.2 covers the situation in the context of a change of control or sale of substantially all.

MR. KISSNER: Yeah, but I think -- I take your point, Your Honor, but I think that that sort of ignores --

THE COURT: What if there were a merger?

MR. KISSNER: What --

THE COURT: Imagine there were here, the parties were agreeing -- you're sitting down at the beginning of this and one of the things you're thinking about is what happens if there's a merger between me and somebody else, right? You write 12.2 to deal with that problem, but if 4.5 means what you say, then it can't transfer to the acquirer, right?

MR. KISSNER: I agree, and I don't think that

that's at all a fantastical or --

THE COURT: If you wanted --

MR. KISSNER: -- illogical result --

THE COURT: -- to solve that problem, wouldn't you write language a lot like what's in 12.2?

MR. KISSNER: I wouldn't. I would write 4.5 because I think it's crystal clear, right? Nobody can assign the marks unless they consent.

And part of why I'm so sort of confident in this position is because of -- let's think about what these assets actually are, right? It's not money in a bank account, it's not my car, it's not even like a customer list; it's not property plant and equipment, right? These are trademarks, right? And particularly in not just the licensor/licensee context, but also in the context of what are known as trademark coexistence agreements, we talk about that a little bit in our papers. If you read through the jurisprudence and the body of law on that, what becomes really clear -- and it manifests itself, frankly, in all of the decisions that spring forth from it, they're actually very logically consistent because the common thread is that what is paramount is the identity of your counterparty, right? Because -- sorry, Your Honor.

THE COURT: No, I understand, I understand that and I get that point. Can I ask you this question --

MR. KISSNER: Certainly.

THE COURT: -- this -- is this form of agreement sort of an unusual -- this problem arises -- I mean, I understand this was a spinoff, but this sort of situation of I'm letting you use my mark under, you could call it a license or whatever else, and we're dealing -- I don't want you giving it -- you know, it's exclusive, you can't give it to anybody else because for all the reasons usually identified, we care who the user is, et cetera, but we deal with the situation of change of control, merger, sale of substantially all. Is the language here that deals with this both the limitation on use and the restriction on alienation, but with the exception for the change of control and sale of substantially all, is this language unusual, or is this pretty standard?

MR. KISSNER: I confess that I don't know, I haven't -- I'm not an IP practitioner in my whole life.

THE COURT: Well --

MR. KISSNER: And I don't say that to be flippant --

THE COURT: -- no, I hear you. It's just -- look, this sort of -- I guess I'm interested, this sort of problem, you would think, would arise outside of bankruptcy not infrequently when you have a sale of a business that is the holder of a mark, and I guess -- you know, you don't point me

to any case law, as far as I can recall, in which outside of bankruptcy a court enjoined a transaction on the ground that it purported to sell a trademark, you know, in connection with a sale of substantially all in a way that violated, you know, the general principle that you have an exclusive license, but you can't sell it to some third party.

MR. KISSNER: Certainly, I'm aware of none in this coexistence framework, right? And my understanding --

THE COURT: Right, but --

MR. KISSNER: -- is it's a bit bespoke --

THE COURT: -- does this depend on the co -- that's actually my question, is there anything special about the coexistence framework that ought to be different from what happens any time you've got an exclusive use of a mark?

MR. KISSNER: Well, I'm not sure that it's exclusive right for all of the marks, right? You actually need to parse the agreement on a --

THE COURT: Okay --

MR. KISSNER: -- mark-by-mark basis --

THE COURT: -- it doesn't even need to be exclusive for this purpose, though, for the analysis, right? The point is that -- all I mean is that it's not -- you can't give it to some random person.

MR. KISSNER: So it comes up quite frequently in the licensor/licensee context, right? And this is actually

where the Code comes in, where 365(c)(1) comes in, which says -- and I think this is really important because people tend to focus on one part of the sentence and not the other, right? And so what 365(c) says -- and I'll -- we can wait if you want to go there.

THE COURT: Let me make sure I understand. I think I know what the words say, but let me look at them. Okay.

MR. KISSNER: Okay. So, (c), "The trustee" -- here SunPower, debtors -- "may not assume or assign any executory contract," dot, dot, dot, "whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties if applicable law excuses the party, other than the debtor, from accepting performance from" a non-debtor, right?

And I think that when courts look at this and they talk about it, and when we as practitioners engage with this from day to day, I think the way we just read this is we go, okay, trustee may not assume or assign a contract, blah, blah, blah, blah, blah, if applicable law excuses the party, but that's not what it says, right? It says whether or not such contract prohibits or restricts assignment or delegation of duties, whether or not, then it may not be assigned if applicable law excuses the non-debtor from accepting performance from somebody other than the debtor, and the

paradigmatic example of that is in a license of intellectual property.

(Pause)

THE COURT: Okay.

MR. KISSNER: And so where we -- you asked for a case and so it's not one with this coexistence framework, but I think the debtors cite to it as well, is in the Trump Entertainment case, right? And I think that that has a pretty good recitation of how this works. There's a federal -- there's a background body of non-bankruptcy law that excuses performance, right? It excuses performance by a party other than your contractual counterparty under a license, under this idea that your identity of interest is of paramount importance. These are idiosyncratic things. I can't -- or Maxeon can't go out onto the open market and buy another SunPower, right? It's priceless; it has no price, it can't be quantified.

And so you have a chorus of courts applying non-bankruptcy law that apply the law of marks and they consistently, in granting specific performance, right, in granting injunctions, preliminary injunctions against potentially infringing conduct, they do that not because equitable remedies are favored. In fact, it's the opposite, right, and our system of legal remedies are favored. The reason why they do it is that they recognize these are

idiosyncratic pieces of value and, if you cannot control who your counterparty is, what can they do? They can destroy the mark, right? They can abandon its use, they can start selling an inferior product under it; they can acquiesce to infringing uses by others, right? And these are all things that can lead to a forfeiture of value. And so those are respected within bankruptcy.

So that's sort of where I come out on 12.2.

THE COURT: Okay.

MR. KISSNER: And that's without even getting to the factual questions as to whether this is applicable, whether under the non-bankruptcy case law relating to changes of control, whether that's been met. I think those are distinguishable, but I'm not sure that that's sort of where the rubber meets the road today, but if you have questions about that --

THE COURT: Well, if you want to argue that it's not met, you should do so.

MR. KISSNER: Sure. So let's look -- so I think that -- so I think a couple observations. First, I think it's going to be the debtors' burden here to establish through the evidence that there is a change of control that is of the type contemplated in the contract.

THE COURT: I think the relevant provision is (b), the sort of sale of substantially all --

MR. KISSNER: The sale of substantially all assets.

THE COURT: Right.

MR. KISSNER: And so -- number one, so what does the evidence say? So, well, let's ask Mr. Rogers, the CEO of SunPower -- or of Complete Solaria, what does he think he's buying? Did he think that he's buying the entire business? Is he buying substantially all --

THE COURT: So the argument is that it's through a series of sales, and I think it's pretty clear from the record in this case that there's not going to be anything left of the debtor when these transactions are done, right?

MR. KISSNER: Sure.

THE COURT: So why doesn't that answer the question?

MR. KISSNER: Because, respectfully, those cases, that body of law applies to situations that are not analogous to this, right? So if we're looking at, for example, are we going to impose tax or regulatory liability that's triggered under statute by a sale of all or substantially all assets, then under -- you know, call it substance over form or a step transaction-type analysis, it would make sense that if liability is triggered on a sale of all or substantially all assets, and let's say that you set a threshold, right, call it whatever you want, 80 percent of the assets, right? It's

like structuring with bank secrecy laws, right? I can't just go and deposit $9,999 every day to get around bank reporting requirements, it's the same thing. I can't just take my $100 million of assets and sell them to a hundred different buyers for $1 million and say no tax liability, right? No triggering partnership dissolution rights, no triggering an appraisal right, right?

And that's completely different than here where they're basically saying that, oh, since the Complete Solaria sale happens to be one of the last to close in a sequence, and since there aren't going to be material assets left, it's really a sale of all or substantially all assets. That doesn't really accord with me.

And let's look at what --

THE COURT: Well, slow down a second.

MR. KISSNER: Sure, sure.

THE COURT: Do you disagree that what's being sold is the only operating business of the debtors?

MR. KISSNER: I think there's probably a materiality threshold on that because like there are excluded assets in the API --

THE COURT: No, I understand that, but just in plain English, sort of normal business terms, is there an operating business, right? I understand that's -- like there's no formal definition of that, but we all kind of know

what it is. Do you think there's an operating business other than what's being sold?

MR. KISSNER: After the final sale that Complete Solaria closes, were it to close?

THE COURT: Yes.

MR. KISSNER: I don't think there would be a material operating business left, no.

THE COURT: And so just when you think about the purpose of this sort of provision, just as an ordinary, sort of common sense commercial matter, like this isn't -- we're not talking here about -- and is there an operating business today before anything has closed other than the Complete Solaria -- other than the assets that are being sold here?

MR. KISSNER: I believe so. There's the PV module reporting, all that that's being left behind, and I think that's part of this SunStrong sale. There was a loan book, I would call that an operating business, right? They're financing.

I guess, if you want to talk about the purpose -- and, by the way, we don't have any evidence from the debtors or otherwise on what the purpose is, but if we want to infer based off of the background body of intellectual property law why parties might draft a contract like this and why it might be, as an IP counterparty, you might -- and this is just assuming for the sake of argument that 12.2 has anything to

say about a sale of the marks and, obviously, I disagree -- but let's live in the world where 12.2 does have something to say about it, I think it actually makes a lot of sense that a contractual counterparty might feel better in a scenario where all that's changing is a change of -- an actual change of control, right? Be that through a change of equity ownership at the top of the structure or through a true sale of all assets, right? Because what we're getting at there is that basically the form of the transactions shouldn't really matter, it's the substance.

And so if this entire company writ large with the executives, with the contracts, with the employees, with everything that I've gotten comfortable with and done my due diligence and underwritten them on, if they're truly only just being sold at the top, the equity is changing hands, I think that's a lot different than we're hacking up this company, selling it for parts to disparate people and, oh, since this happens to be the last one in the chain that closes and it's substantially all the assets that remain, all of a sudden you lose your rights, your negotiated rights over who your counterparty is. I just think that's -- I don't know, I cannot imagine that being the reading of this contract or the intention of the parties.

And I think if the shoe is on the other foot, right, one of the things that I think gets lost in some of

the papers is that it's not like this was some one-way right that was granted in favor of a capricious lender, right? These are mutual obligations and benefits that go back and forth to govern the amicable split of these two companies, right? And it's just -- it's consistent with this idea of trademark law that it's you'll use it or you lose it. You can have it for a while; I get it back when you're done.

THE COURT: Well, how do you explain that with -- so you're saying 12 -- so then why does 12.2 make any sense at all? Once you get back -- once you get back the mark, what other obligations could you be giving to the buyer in a sale of substantially all if they don't get the mark?

MR. KISSNER: So there's a couple, so -- and one is actually no longer operative because there was a subsequent amendment to the contract that isn't relevant to a current dispute, but this contract was amended to get rid of certain restrictions set forth in -- sorry, wrong contract -- in section 6.1 of the agreement, which at the start had imposed an exclusivity obligation --

THE COURT: Okay. And the parties amended that and left 12.2 in, right?

MR. KISSNER: I suppose.

THE COURT: So why? If 12.2 would no longer have any work --

MR. KISSNER: Well, six point --

THE COURT: -- so shouldn't I conclude that 12.2 still has work to do after they took 6.1 out?

MR. KISSNER: It does. And there's other provisions, I'll get there, but 6.1 wasn't just excised wholesale, right? What 6.1 was amended to say was that, going forward, SunPower could use panels that were not sole sourced from Maxeon, right? That was the amendment. 6.1 still imposed other obligations and, in theory, in a true change-of-control provision -- or change-of-control scenario, if you were Maxeon, part of this is for your benefit, you would want the buyer to still be bound.

And on the flipside, if the shoe was on the other foot, right, if Maxeon was the one being sold, presumably SunPower would also want the benefit of 6.1. The other is the mutual indemnification rights going back and forth.

THE COURT: No, but -- so help me with this. If the buyer isn't getting the marks, why would they take this contract?

MR. KISSNER: Just because the buyer thinks they're getting the marks, though, doesn't make it so, right?

THE COURT: No, no, no, but if the parties -- what you're talking about, and it's a fair and thoughtful response, which is the parties reach an express agreement about what obligations the buyer would have if there was a sale, and none of that makes -- none of those obligations --

those obligations are premised on the notion that the buyer also gets the marks.

MR. KISSNER: So the other potential provision would be the reversionary interest of the ROFR. There is law, right, out there that says that ROFRs are presumed to be personal, and that's in contrast to options agreements.

So, if you were to construe this contract as granting an option as opposed to a ROFR -- we think it's a ROFR, but I'm not going to stand up here and say that reasonable minds can't differ, it does use the term option to purchase, right? That's something that can be assigned, that's something that has value, right?

THE COURT: Okay.

MR. KISSNER: So there's still work to do. And, by the way, the marks, right, like let's not lose sight, the general rule is that there's a contract, and this contract says a lot of things. And so what the parties agreed to was that, generally speaking, you cannot assign this contract, any of it, right? Provisions 1 through 12, you can't assign it. But maybe if there's a sale or a change of control, we're going to examine that and, if it meets the criteria in 12.2, you can.

But, notwithstanding that, 4.5 says what you can't do. 365(c)(1) says that it doesn't even matter what the contract says if federal trademark law or other non-

bankruptcy law would excuse you from accepting performance, then, again, you don't have to accept performance under the license, but I just -- I really, through clever --

THE COURT: So can we talk about that for --

MR. KISSNER: -- argument notwithstanding --

THE COURT: -- can we talk about that for a second?

MR. KISSNER: Sure.

THE COURT: So -- because one thing that I'm struggling to wrap my brain around, right, imagine you've got a contract that is expressly assignable, right? By its terms, if you sell it to Buyer A, B, or C, you're welcome to sell. Now, is your position that even though the contract expressly permits the sale that if the owner of the mark, right, who had licensed it, and the licensee is selling its interest to someone to whom the contract says the licensee can sell it, that the whether-or-not language means that seller can come in and object?

MR. KISSNER: That's our position. And I'm not aware of any law on this one way or another --

THE COURT: Well, so another way to think about this is, if you are exercising express contractual rights, you're not -- that 365 is about the bankruptcy power, it's about the power to override contract provisions, and that if all you're doing is exercising contract provisions, you don't

need the bankruptcy power. You're just assigning under non-bankruptcy law and, therefore, the whether-or-not language is beside the point. Does that -- do you have a thought on that question? Because the question is, if the assignment is expressly prohibited -- I'm sorry, expressly permitted such that you don't need the Bankruptcy Code power to override anti-assignment provisions, why can't you just assign it without relying on 365? And just say, under non-bankruptcy law, this is an assignment.

MR. KISSNER: So I think the -- what the Court does -- and the case that I'm aware of that deals with this is the Trump Entertainment Resorts case, right? And so there, you know, the court found that, sure, you can contract around 365(c)(1), right? And so there was expressly delineated what you could do, when you could do it.

And so there I believe it was you could assign it to the first lien lenders in connection with an enforcement action. And so then there was an examination is this -- the first lien lenders, is it an enforcement action? If it isn't, then you can't, right?

THE COURT: But if it is --

MR. KISSNER: But if it is -- the court never -- and I'm not aware of anybody raising in that this whether-or-not language, right? And there's a difference between a limitation on assignment -- and, actually, we're not the only

ones to struggle with this, right? Actually, for a long time, even at the circuit level, there was a large split that I don't think was ever really resolved, it was just sort of memory hold because we all moved on and the body of law developed, but there was a whole debate as to what 365(c)(1) even meant, right? Because there was some question -- and I think the First Circuit went one way, the Third the other -- there was this question as to whether (c)(1) meant anything at all because there's other provisions of 365 that say, oh, you can assign notwithstanding language in the contract restricting assignment.

And what I believe it was the Third Circuit observed, though, is that in (c)(1) there's this phrase that does a lot of work, right? It's whether or not -- whether or not, or not, the contract permits assignment or delegation of duties, right, there is an out if applicable law would excuse you from accepting performance, right?

And so it's less about assignment and it's more about whether you could be forced to accept performance. And so --

THE COURT: Okay. And are you talking about the Trump Entertainment case, or are you referring to like --

MR. KISSNER: I'm talking to --

THE COURT: -- West Electronics --

MR. KISSNER: -- fir principles -- to which?

THE COURT: To like the West Electronics case --

MR. KISSNER: Yeah, yeah, West Electronics, yeah.

THE COURT: -- all those cases about actual versus hypothetical in 365, that --

MR. KISSNER: Yeah --

THE COURT: Okay.

MR. KISSNER: -- I'm talking about that body of law where they were first actually confronting what this provision actually means. And it happens to be that Trump was a manifestation of sort of this trademark question in the context of licenses, but what 365(c)(1) is actually about is it's not about anti-assignment provisions, right? It's about day one contract law, a personal services contract or something where the identity of your counterparty is crucial to the performance, you can be excused from accepting performance, right?

THE COURT: Okay.

MR. KISSNER: And what the contract says is a factor, right, to discerning the intent of the parties, but it is not outcome-determinative, and that's what 365(c)(1) says.

THE COURT: Okay.

MR. KISSNER: So we talked about 12.2. That relates to the contract itself, not to the underlying ownership. And so, if 12.2 doesn't apply, and it's our

position that it doesn't, then I think we're in the realm of 363, right? Subsections (e) and (f), because Maxeon has an interest, right, it has an interest in the marks. It's been granted by a contract that is no longer executory with respect to that grant, they have not filed an avoidance action; they have not moved to rescind it, right?

And so what does the Bankruptcy Code say in 363 about a sale of property that's subject to an interest, right? So (e) says that the Court may, among other things, prohibit a sale as necessary to provide adequate protection. And in the debtors' reply they barely mention adequate protection at all, right? It's actually relegated to a footnote, footnote 19, that's paragraph 19 in their reply, and what they say is -- and I'm paraphrasing -- that Maxeon is adequately protected by the brand framework agreement, which they maintain is going to stay in place, and by Complete Solaria's financial strength and expertise in the solar area, right?

And so I usually like to start with the facts and then go for the law, but let me talk about the law first because there's a whole body of case law out there that says that parties in Maxeon's position can't be adequately protected as a matter of law. And I'm happy to talk about those, but they're in our briefs. It's the Dewey case with the relocation of the Coyotes, who finally did actually end

up moving to Salt Lake City this upcoming season, but in the Dewey case they tried to move them over the rights of the NHL, who had an absolute right to place limitations on the transfer of franchises in order to maintain competitive balance, and also maintain the rights of third parties in their market and the right to the goodwill that came from having a hockey team in that market, right?

And the debtors and the proposed purchaser in that case, they said, look, these are contractual provisions, right, these are monetary obligations. And they said, look, you're adequately protected because you're going to charge a relocation fee and, you know, if we need to, we can figure out a claim for damages.

And what the court there said is they said -- is the court said, no, right, this is a valid restraint on alienation, if you want to call it that, it's a restriction on transfer. It was freely granted by each member franchise in the National Hockey League as a condition of participation right. And it involves a relationship of such personal kind and character that one would be entitled to specific performance thereof outside of bankruptcy. Therefore, there cannot be adequate protection and I'm going to prohibit the sale, right?

And so I can just imagine reading this reply, right, the debtors say, oh, Maxeon is extracting value from

the estate, they're exercising a veto right, they're going to, you know, hold up all this value for no consideration, right? And I can imagine that the debtors and the purchaser in Dewey probably said the same thing, right? They said, oh, the NHL is engaging in rent-seeking behavior there and trying to exploit a monopoly. And the court said, look, these were valid contracts that were entered into, they have a valid purpose, they would be entitled to specific performance. This isn't a matter of damages, right? You can't just go out and buy another Phoenix Coyotes on the market, right? And, therefore, you can't be adequately protected, so I'm going to prohibit the sale.

The same thing in Chicago Board of Trade, right? And actually I think that one, from the modern view, the debtors in their reply, they distinguish Board of Trade a little bit here by saying, oh, well, that was just a limited consent right because it was conditioned upon paying off a debt in full, that almost is more abhorrent to the modern view because it would violate -- arguably, it takes a payment of a prepetition claim out of the absolute priority rule, right? But what the Supreme Court there said is they said, look, the member of the Board of Trade, he had a seat on the exchange, and as the condition to participating in this exchange, as a condition to this ownership right and his seat, he agreed that he can't sell it if he hasn't paid off

his debts, and he also agreed that the other members of the exchange, they could block that transfer if they hadn't been paid. And so the bankruptcy estate didn't have more than the debtor had.

And I won't go chapter and verse down the list, but what these cases show is that in a sale of an idiosyncratic property interest that can't be replaced with restrictions that were freely entered into by sophisticated parties that there is no adequate protection, so it's appropriate to prohibit the sale.

Again, that's as a matter of law. The debtors don't engage with that at all, right? What they say is -- and so let's pretend that law doesn't exist, right? I'm going to meet the debtor on their own terms. They say we're adequately protected, and we're adequately protected by a couple things, by the brand framework agreement remaining in place, and then by Complete Solaria's expertise in the space and --

THE COURT: So can I pause you --

MR. KISSNER: Sure.

THE COURT: -- just as a matter of efficiency? Look, I am tentatively persuaded that if I think of this as a -- the brand as -- let me say it this way: If the contract doesn't permit the sale and it's not an executory contract, if we're in that world and you argue that they are, and I'm

not -- I'm not sure you're right, but I'm thinking about those points, but I think -- I tentatively think that, if you're right about that, there's nothing in 363 that would allow the debtor to sell the marks. In a world in which the contract wouldn't permit it, I think you're right, that would give the debtor more than they had outside of bankruptcy and I read Mission Products to prohibit that.

So I'm going to give the other side the chance to persuade me that you're wrong about that, but I think for now let's assume that you've -- that if you get through those other doors, you've persuaded me on that and you don't need to spend more time now on that point.

MR. KISSNER: Okay.

THE COURT: But if they persuade me the reserve, you'll have plenty of time to get up and tell me why I was a sucker for believing them.

MR. KISSNER: Okay. Is that your polite way of saying you don't want to hear about adequate protection right now?

THE COURT: Exactly.

(Laughter)

THE COURT: And I don't think it's necessary --

MR. KISSNER: Okay, fair enough.

THE COURT: -- because I'm tentatively persuaded that you're right that if -- if it's an asset and the

contract says you can't sell it, then I'm not even -- I'm not even sure it's an adequate protection point. I don't know how, if you have something -- you know, the Chicago Board of Trade point that says the debtor can't have more than -- the debtor-in-possession doesn't have more than the debtor had beforehand strikes me as correct.

MR. KISSNER: And the last thing before I sit down, because I had it written down here and I'd be remiss to not point out, germane to this question of contract versus asset, right, just ask Complete Solaria, look at their APA. What did they want to buy? They wanted to buy the SunPower marks, right? They don't want to buy a brand framework agreement.

I actually think that if they -- if they had their druthers, right, they wouldn't be bound by this. Why would they want to be? Why would they have to attend a brand council and split decision-making with us, right? So that's not what they're interested in. They're interested in buying the marks. And the APA, that evinces a distinction between the contract and the asset, and so I think that's more in the totality of the circumstances that show that they're distinct.

But thank you very much, Your Honor.

THE COURT: Thank you.

Mr. Collins.

MR. COLLINS: Thank you, Your Honor. Again, for the record, Mark Collins of Richards, Layton & Finger on behalf of the debtors.

Your Honor, you have a copy the brand framework, I believe.

THE COURT: I do.

MR. COLLINS: I want to spend just a few moments starting back at the framework agreement because I think that is kind of the roadmap on how we're proceeding here, and I want to first take you to the third whereas clause of that agreement. And here the parties set forth the intent of this agreement and it's very clear, it's to allocate ownership and use of trademarks as set forth in the agreement. And what the agreement does is basically allocate license and ownership rights worldwide for the SunPower marks. Ownership is critical, integral to the brand framework agreement, as are the license rights that are contained in that agreement as well.

I then want to take you to Section 2.4, the reservation of rights, because I heard time and again from Counsel to Maxeon this qualified ownership, their possessory rights, this reversionary interest, making it sound like there's somehow an owner currently of the U.S. marks. I think that's what he was saying. But if you read the reservation of rights, it's very clear. It says, except for

those rights expressly assigned in 2.1, which is them obtaining the rights to the mark outside the brand territory, that means the rest of the world other than the United States; 2.2, getting their ownership rights in the Maxeon marks; and 3.1, which is, I believe -- let me look there real quick -- a license to use the marks in the U.S. territories, and some other things. Those are the three paragraphs it cites. So, except for those rights, 2.1 --

THE COURT: Right.

MR. COLLINS: -- 2.2, and 3.1, that provision says SunPower shall remain the sole and exclusive owner of all right, title, and interest in and to the SunPower marks. That's where we are.

I then want to turn to 12.2. 12.2 is clear on its face that Maxeon provided advance consent to an assignment of the brand framework agreement to a buyer of substantially all of the assets.

THE COURT: Right, but what's your response -- look, I understand at some level the response that what I'm about to ask you is sort of deep in the weeds and (indiscernible) but what is your basic response to his point that what he says is, look, there are agreements under the contract, those are executory, those would flow with an assignment of the contract and separate from the agreements, the assignment of the contract, as soon as this contract was

entered into, there was a conveyance of certain property rights, and the assignment of the contract is a different thing from the transfer of those property rights.

MR. COLLINS: I would say that that would really confuse the purpose and intent of 12.2. 12.2 is there for when you're talking about a transaction of substantially all of the debtors' assets, certainly changing the entire company in that transaction, and it's hard to imagine that you could assign the brand framework agreement, which includes the allocation of the underlying ownership and license rights, and not convey those ownership rights that are expressly set forth in that very agreement.

I view the transfer of the title going to the buyer as part and parcel of carrying out the purposes and intent of a brand framework agreement when it was entered into at the time of the spinoff.

THE COURT: Okay. So if you're right about that, let's just play this out --

MR. COLLINS: Yeah.

THE COURT: -- then what is your response to the whether-or-not language in 365(c)?

MR. COLLINS: I view 365(c), Your Honor, as dealing with license rights. We're now talking about ownership, right? We own the marks in the U.S.; we have the right to sell our marks to a buyer.

THE COURT: All right. Well, let's -- would that be true if you didn't satisfy 12.2?

MR. COLLINS: Yeah, I think it would.

THE COURT: So --

MR. COLLINS: These are owned -- these are owned trademarks. We're not talking about license rights. We are the licensor in this situation.

THE COURT: So read 4.5 then and tell me, even if you own the marks, why it wouldn't control.

MR. COLLINS: 4.5 is --

THE COURT: If you weren't in the world of 12.2.

MR. COLLINS: If we weren't in the world of 12.2, then I do think 4.5 would be operable, and we have all of our other arguments as to why 4.5 is not enforceable as written.

THE COURT: Okay. And so -- and I understand your arguments about forfeiture and, you know, it's --

MR. COLLINS: Blanket veto right --

THE COURT: -- destructive of value, and I'll hear you on that. For this purpose, assume you're uphill --

MR. COLLINS: Right.

THE COURT: -- if you're to persuade me of those things --

MR. COLLINS: Right.

THE COURT: -- but your -- I take it your core argument is you don't need to persuade me of those things

because, even if that applies, 12.2 is essentially the more specific provision that controls in this context, and that the reference to assigning the agreement as an ordinary commercial matter means not just the ongoing executory obligations, but all of the rights provided under the agreement.

MR. COLLINS: Correct. And when you look at -- and in 12.2 it talks about a sale of substantially all of the assets, that is part of the defined term of change in control transaction. As we've heard from the buyer, the trademarks, that which allows you to sell the product would not be going to a buyer? That makes no sense and how would you have a sale of substantially all of the assets if you could not --

THE COURT: Right, without the --

MR. COLLINS: -- transfer your ownership interest in the trademark.

THE COURT: Of the thing that allows you to have a business.

MR. COLLINS: Correct.

THE COURT: Okay.

MR. COLLINS: And allows it to survive.

THE COURT: Okay.

MR. COLLINS: I will spend a moment, Your Honor, on I think Counsel took --

THE COURT: Can -- can I --

MR. COLLINS: Yeah.

THE COURT: -- just tease that out for a moment?

MR. COLLINS: Sure.

THE COURT: So with respect to the trademark -- I see, no -- okay, but then I do run into the whether-or-not. So, if you're right about that, 12.2 permits an assignment of all of your rights that derive from this agreement in connection with a sale that is a -- that satisfies the requirements of 12.2 --

MR. COLLINS: Correct.

THE COURT: -- you still have -- you then run into the 365 -- because you don't dispute that at least some obligations under this agreement are executory because you're moving to assume and assign it, right?

MR. COLLINS: Correct.

THE COURT: And this is a trademark agreement, right, a trademark license where non-bankruptcy law generally -- so the language of 365(c) is otherwise applicable, right?

MR. COLLINS: Correct, with respect to those aspects of the brand framework agreement where license rights are at play.

THE COURT: Right, okay. And so, as to that, the point that is made is the beginning language of 365(c) that says the trustee may not assume or assign any executory contract or unexpired lease of the debtor, comma, whether or

not such contract or lease prohibits the assignment if.

And so his point is, look, you've established perhaps that the agreement does permit it, but 365(c) by its terms says you can't assign it whether or not it can be -- whether or not the agreement permits it if non-bankruptcy law would otherwise -- that's a surprising conclusion to me, but --

MR. COLLINS: And it flies in the face of case law.

THE COURT: Well, tell me what cases then.

MR. COLLINS: The Trump case itself --

THE COURT: Okay.

MR. COLLINS: -- where Judge Gross -- it's -- he says it so straightforwardly that it -- and this is true of other cases -- you can contract around your rights under 365(c).

THE COURT: Got it.

MR. COLLINS: How could you not be able to do that, right? Parties have that right to do so. These are sophisticated parties; we're talking about a global business. They even reference -- I think there's talk about their 365(n) rights. They were fully aware of all of their --

THE COURT: Okay.

MR. COLLINS: -- legal rights and I think they clearly have the right to contract around it, and that's

exactly what we did in 12.2.

Counsel, I think -- he equivocated on whether or not this is a sale of substantially all of the assets. We have submitted the testimony of Mr. Henry on this point. We also cite in our brief a great deal of case law. We think that under any test that is used by courts or under the Model corporation laws we need it, and we need it whether this is a standalone transaction just looking at the Complete Solaria transaction or, obviously, when you aggregate the sales that are pending before Your Honor.

And Mr. Henry, in paragraph 9, says a number of very beneficial things about the going concern sale that is before Your Honor. This is in paragraph 9, I think it's the third or fourth sentence, quote, the stalking horse bidder anticipates retaining up to 1300 employees, nearly 90 percent of the employees anticipated to be hired by the buyers; they are taking 88 percent of the contracts the debtors anticipate assuming and assigning through this Chapter 11 case, I believe that's 1100 contracts alone as part of the Complete Solaria transaction; 100 percent of the property leases, I believe there's four that are being assumed and assigned; and, importantly, the going concern consideration. When you look at the total consideration the estate is receiving for its going concern operating assets, 98 percent comes from Complete Solaria.

THE COURT: You're talking just about the purchase price of what the auctions have yielded, is that --

MR. COLLINS: For the operating assets. I'm not talking about the non-operating assets that were those separate, kind of one-off transactions, we're talking about really the heart and soul of the business, the operating business.

Finally, we say that the going concern asset sale in turn represents approximately 67 percent of the total expected value of the debtors' assets.

And we cite a case by analogy because we're now -- the contract itself does not define what substantially all of the assets means, so, by analogy, we look to case law. California has a few cases. Delaware, not surprisingly, has a much more developed precedential cases on the issue of that because it's so prevalent in our general corporation code. But I want to turn to the one case, this is Thorpe, this is the Thorpe case in the Delaware Chancery Court -- it's actually a Delaware Supreme Court affirming the Court of Chancery's finding that a sale of 68 percent of the company's assets and the effect it would have on a radical transformation of the company at issue with substantially all of the assets.

We'd also note, and we've put this in our briefing as well, the cases look to the underlying intent, purpose of

the company, and you would look at that and you determine is the inherent -- and then what they actually use, the words heart and soul of the business, is that being sold as part of the transaction. Here, I think it's without debate that SunPower, as it exists, is being transferred to SunPower, all of the operating -- virtually all of the operating assets are going to the buyer.

Also in Mr. Henry's declaration -- again, I believe this is un-refuted and un-rebutted testimony, all that we heard contrary was a statement at, I guess it was a shareholder telephone conference that talked about, hey, we're not buying everything, I think he could have interpreted that to mean we're not buying the equity, we're doing an asset deal, but who knows. In any event, I think that's irrelevant and not helpful to the Court.

But, back to my point, turning to paragraph 16 of Mr. Henry's declaration, it notes that -- and I'll just read it entirely: "The debtors intend to continue discussion with parties who have expressed an interest in the debtors' remaining assets, which constitute approximately ten percent of the total expected value of the debtors' estate." That is what we're going to be left with following the Complete Solaria sale, as well as the other sales.

THE COURT: I see. So, just so I understand the math here, the Complete Solaria sale you say is 67 percent,

that means that the other sales that are in progress are --

MR. COLLINS: Twenty percent?

THE COURT: -- 23 percent, what have you --

MR. COLLINS: Somewhere in that range.

THE COURT: -- and that there remain ten percent thereafter?

MR. COLLINS: Yeah --

THE COURT: Got it, okay.

MR. COLLINS: -- exactly. And then I also -- and sorry for making you go back and forth on this, but the last sentence of paragraph 9 of his testimony again is important, again going to the heart and soul of this company. It says, "Upon closing of the going concern asset sale, the debtors do not expect material operations to remain other than those necessary to temporarily support the transition of the business to Complete Solaria."

So, Your Honor, we believe it's, again, un-refuted and un-rebutted, this is a sale of substantially all of the assets, we're in Section 12.2 land, and Maxeon has given its consent to assume and assign the rights and obligations in a brand framework agreement to the buyer.

I can spend some time, Your Honor, on some of the subparts of our brief where we talked about if the Court reads 12.2 and 4.5 as being at odds with one another, we again believe the specific overrides the general. And I just

want to, if I could, just look at 4.5 of the agreement for a second. So I think I count in that section a lot of the words "any" in there.

So 4.5, it says, "Neither party shall, unless approved by the parties" -- we think we have that under 12.2 -- "sell, assign, transfer, license" -- I'll skip the parenthetical -- "or otherwise dispose of any of its right, title, or interest in or to any of the SunPower marks."

That is so broad it's covering potentially any and all one-off transactions of a sublicense, a transfer of a potential mark, granting a sublicense to a particular --

THE COURT: Is your point that this is the more general, is that where you're going?

MR. COLLINS: Yes, yes --

THE COURT: Okay, I understand that point.

MR. COLLINS: -- exactly. I'm sorry if I'm confusing you --

THE COURT: No, I'm a little slow, so I appreciate it.

MR. COLLINS: No -- yeah. So by using the word "any," it is just -- it's a very general provision, and clearly 12.2 talks about a transaction of substantially all of the assets, which we obviously have here, we believe.

We spoke about contracting around 365(c). And, at Your Honor's discretion, we do think, as -- that there is a

365(l) *ipso facto* component here if you take what Maxeon has said in its own pleadings that they are allowed to veto any sale of the debtors' assets, the marks, when we're in financial distress -- well, they say that's the first part of what's at issue. They then say, when that happens, they use 5.2, the right of first refusal, to pick up the marks for free, right? That is a forfeiture of the debtors' value in these trademarks, it arises when the debtor is no longer a viable operating entity, and that meets both tests of 365(l), both at --

THE COURT: So do you -- can I -- I'm sorry for taking you off track --

MR. COLLINS: Yeah, fine.

THE COURT: -- but with respect to 5.2, by its own terms, do you think that this transaction triggers 5.2?

MR. COLLINS: No.

THE COURT: And why is that?

MR. COLLINS: Because we're not discontinuing or abandoning the marks.

THE COURT: Okay, okay.

MR. COLLINS: I mean, the sale is all about --

THE COURT: Got it.

MR. COLLINS: -- obtaining the value --

THE COURT: Okay. So 5.2 has been discontinued. Okay, all right.

MR. COLLINS: Right.

THE COURT: So at some level, I don't need to engage --

MR. COLLINS: I don't think you need to --

THE COURT: -- this question --

MR. COLLINS: -- but if you --

THE COURT: Okay.

MR. COLLINS: -- thought --

THE COURT: No, I appreciate it.

MR. COLLINS: -- 5.2 was at issue, we think it's void under 365(l).

THE COURT: Okay.

MR. COLLINS: I also want to just spend a moment on looking at 4.5, if Your Honor thought it was applicable in some regard. What is at issue in 4.5 is a blanket consent right, so it's really a veto right. There are no guardrails around that right. Even in Dewey, the case that he talked about, the NHL, they were talking about whether or not the buyer had a good reputation, and there were issues in that case about whether or not the buyer had satisfied the reputational requirement in the NHL ownership guidelines, and whether or not that buyer has sufficient financial wherewithal to properly operate an NHL franchise. The court didn't get to that because it basically said 365(e) is -- we're done at 365(e) -- I'm sorry, yeah, 363(e). There's no

way you can provide adequate --

THE COURT: Assurance, right --

MR. COLLINS: -- assurance for them --

THE COURT: -- but can I ask you this. Why -- assume you didn't have 12.2, if you didn't have 12.2, why isn't Maxeon correct that giving you the right to sell when you didn't have that right outside of bankruptcy, that there's nothing in -- there's nothing in 363 that should give the debtor -- let me start from the beginning.

Do you agree with the proposition that there's nothing in Section 363 that gives the debtor the right to sell an asset that outside of bankruptcy it doesn't have the right to sell?

MR. COLLINS: I guess I have to take exception --

THE COURT: Other than -- other than the *ipso facto* provision, right? There's a provision of 363 that invalidates *ipso facto* provisions with respect to sales.

MR. COLLINS: I think property, owned property is always alienable. So I don't think there's anything --

THE COURT: So you disagree with the proposition that, outside of bankruptcy, there is such a restriction if you own it?

MR. COLLINS: On owned -- on owned intellectual property, yes.

THE COURT: Okay.

MR. COLLINS: I think 365, at least I have always thought it to be, is if we seek to assume and assign license rights as a licensee, the mark is owned by somebody else, then 365 comes into play.

THE COURT: Right, but what if the owner of the mark -- well --

MR. COLLINS: Which is the debtors.

THE COURT: -- I understand. And there's -- there's -- this is what makes this sort of problem hard to wrap your brain around, which is holding a license can at times be viewed as a form of ownership, right? It's ownership of part of the intellectual property. So you can view that through the lens of assignment, right, I'm signing a license agreement, or you could say I'm selling what was my interest, right? You gave me this stick out of the bundle and I'm selling it.

And there's not a right or wrong answer to that --

MR. COLLINS: I understand, and I understand your point, Your Honor's point, but I think when you look at what's really at issue and ownership rights and the ability to convey them, as based in our law, I think that would control.

THE COURT: Okay, all right. What else should I understand so I don't get this wrong?

MR. COLLINS: The only other point was, Your

Honor, we cite a lot of case law about an unfettered, absolute consent veto right which causes a forfeiture is void as an anti-alienation clause, we cite California law to that point, we cite TUSA, we cite a Sixth Circuit BAP case, In re Hake --

THE COURT: And I take it, is that an argument that's based on bankruptcy law or non-bankruptcy law?

MR. COLLINS: Non-bankruptcy law.

THE COURT: Okay.

MR. COLLINS: We actually cite to the California Code section Section 711, which notes -- and I'll quote it, it says -- it's California Civil Code Section 711, "Conditions restraining alienation, when repugnant to the interest created, are void."

Now, the courts have interpreted that as leading to kind of are there justifiable restrictions --

THE COURT: Right.

MR. COLLINS: -- does it make sense? Here, there is -- there's nothing to justify. They have simply the veto right and they're using it in order to trigger their rights under the right of first refusal to pick it up for free.

Finally, Your Honor, we cite to 363(f)(4). If Your Honor views this as being subject to debate or a contest on these rights, we think we can sell free and clear of this bona fide under 363(f)(4) --

THE COURT: So --

MR. COLLINS: -- but, again, we don't think we need to get there.

THE COURT: Okay, okay.

MR. COLLINS: That's all I have, Your Honor --

THE COURT: All right.

MR. COLLINS: -- unless Your Honor has more questions.

THE COURT: I don't. Let me -- can we have a housekeeping conversation for a moment?

MR. COLLINS: Sure.

THE COURT: So I do want to make sure I give the opportunity to reply, but just in terms of timing because I know I'm going to be yelled at by my fabulous judicial assistant if I run through much more of lunch, is there anything else on the agenda today beyond resolving this issue?

MR. MICHALIK: No.

THE COURT: Okay, and let me ask this question. In terms of getting you all a decision, is there, as a commercial matter, a big difference between today and tomorrow? And, if the answer is yes, you should just tell me I need to work fast.

MR. MICHALIK: I think we'd prefer today. We can talk to the purchaser's counsel, but folks are chomping at

the bit to close this as soon as possible.

THE COURT: Okay. All right, okay. So here's what I'm going to do, unless someone feels otherwise. I propose that we take a half an hour, grab a quick lunch, I'll hear the response.

I have a 3 o'clock -- I've got a 3 o'clock argument. What I'm -- what I'm going to do -- I don't know. Let's take a break for lunch, let's come back at like 1:35. Let's go as long as -- let's then see where we are.

So with that, until then, we're in recess. Thank you.

COUNSEL: Thank you, Your Honor.

(Recess taken at 1:07 p.m.)

(Proceedings resumed at 1:42 p.m.)

THE COURT: Okay. So I'm happy to hear a reply. And welcome back, everyone. We're back on the record and thanks for everyone's patience.

MR. KISSNER: Thank you, Your Honor. And for the record, again, Andrew Kissner, Morrison Foerster. It's always good to have an audience with a full belly.

I will be brief, but I just want to level set here for a second. And we'll zoom out. What are we really talking about, right? What's the paradigm that we're living in? And that's this, that applicable non-bankruptcy law, specifically law of trademarks, but it could be any other

law, it's applicable non-bankruptcy law, under certain circumstances it excuses acceptance of performance from a party other than that with which you contracted, right? And there's a number of circumstances under which it's true, for this one we're talking about trademark rights.

And I think I explained this morning and I think in the case law, it's clear why, right? Because trademarks are unique rights, they're one of a kind, they're irreplaceable, and so you're entitled to the benefit of your bargain with the person with whom you bargained, right?

So now we're in bankruptcy, right? And bankruptcy law, it respects that distinction. Bankruptcy law says that generally we want debtors and estates to be able to sell assets to maximize value, but that's not an absolute right and that's not the only policy consideration that there is because you could justify a whole host of things with it maximizes value, right?

And so under certain circumstances, specifically when not a contract, but applicable non-bankruptcy law excuses you from accepting performance from somebody other than the debtor, it upholds that distinction.

And the reasons aren't just those cited in trademark law. Actually, Mr. Collins, he talked about the Dewey case, right? And I think that wasn't about trademarks, right, it was about a hockey team, but I think the concerns

there are actually pretty germane to what we have here, right? And so in Dewey, there was a gentleman, his name was Mr. Balsillie -- if anybody saw the BlackBerry movie, it was Glenn Howerton from Always Sunny, that was him, a real guy -- and he had this bugaboo, he really wanted to move hockey to Hamilton, Ontario, and he tried all these ways over the years to do it. And he also had financial issues, he had gone -- been indicted for securities fraud, right? And so there was -- the point is this wasn't his first time at the rodeo, right? He had done it before. And so he came to the NHL and the Bankruptcy Court and he said I want to buy the Coyotes, I want to take them to Canada, right?

He wasn't writing on a blank slate, there were real financial and reputational concerns about him that led the court to say, you know what, the NHL and the other member franchises have the right to the benefit of their bargain, the identity of their counterparty is important. And here, even though the court didn't reach it, there's findings in there that says, yeah, these weren't just made-up concerns, right?

And so why am I talking about this? Because I think that some of the facts that have been established from the evidence, the uncontroverted evidence, show that these concerns are germane here, right? So what does the evidence show here with respect to the proposed new counterparty?

Well, they have a brand new CFO; he started only a month or so ago. They've had significant operating losses. And I don't know if Your Honor still has the 10-K in front of you, but I'd just like to -- I won't read this document chapter and verse, I'm not a capital markets lawyer for a reason, but if we could -- you know, if you turn to page 43, which is the statement of -- it's the income statement, results of operations for the prior two fiscal years, right. I think in the testimony and on redirect, I think what was elicited from Mr. Foley was this idea that, you know, okay, we can have a difference of opinion, you know, me and Mr. Rogers as to whether there was a horrific court or whether it was a disaster, but this was really a one-off thing, and we've stopped the bleeding and we've fixed the things, but we look -- for the last two fiscal years, full fiscal years for which there's actual audited results of operations available, all we have are huge operating losses: In the fiscal year end 2022, a $28 million loss; fiscal year end 2023, $96 million loss. And so, yeah, they found some capitalization, they found some financing to complete this sale, but it seems that, you know, since Complete Solaria has been a publicly traded corporation, they've had severe losses, right? So that's financial wherewithal.

Let's go to page 59 of the 10-K. And here their auditors, do you know what they stated? They stated there's

substantial doubt about the ability -- the entity's ability to continue as a going concern. That means that when they were sitting here -- and this is dated earlier this year, right? When they were sitting here in April of 2024, they said, we have a substantial doubt as to whether Complete Solaria is going to remain in business as a going concern for the next 12 months, right? So, again, financial wherewithal, financial stability, the evidence suggests that it might not be so cut-and-dry.

We also have testimony from Mr. Foley, right, about how the value of a brand is tied not only to financial stability and financial wherewithal, but that also -- and I'm paraphrasing, but I think he agreed with my paraphrase that being a good steward of IP is something that's important, right, it's important to preserving a brand.

And if we turn to page 95 in the K, there's a disclosure of significant litigation. In fact, there was in February one of Complete Solaria's contractual counterparties, SolarPark Korea, sued it for trademark infringement, for disparagement, and for a whole other host of contractual remedies. And before that ended up going to arbitration, they were actually -- and this discloses that the counterparty, SolarPark Korea, was able to obtain a preliminary injunction, right, and as part of that there was a finding that they were likely to succeed on the merit of

showing infringement of a trademark and disparagement. Again, is that really good stewardship of intellectual property?

And then another thing that Mr. Foley, he testified to is he said that part of maintaining a good brand is quality control, right? The products to which we are attaching these brand -- our brand -- to which we are attaching our brand meets a minimum semblance of quality, right? And what happened? Well, in Q1 of this year, Complete Solaria was found liable for almost $7 million in damage for delivering faulty systems to Siemens that didn't meet spec and did not meet the minimum baselines of quality.

So, again, right, what's this adequate -- and I won't talk about adequate protection, but, you know, the debtors offer this idea that we're adequately protected here, right, nothing to worry about. And they point to financial stability, they point to the fact that Complete Solaria has the expertise and good IP stewardship to be able to do this, right? And what the evidence shows is that that's very, very much in doubt. And, even if it's not in doubt, I think it's enough to show that this is not the counterparty with whom Maxeon sat down a couple years ago and negotiated the brand framework agreement and, as a matter of applicable non-bankruptcy law, they're entitled to their choice of counterparty in this very specific set of circumstances. And

I think the evidence illuminates the concerns for which this body of non-bankruptcy law exists are very germane here.

Briefly, I just want to go back to the Trump Entertainment case that Mr. Collins talked about, we had a colloquy about it, and I think that it helps illustrate why 12.2 doesn't do the work that the debtors think it does and why Trump isn't the panacea to these issues, right?

So what Trump says, right, the court says that -- and, here, I'll get you the concise -- it's a pretty long opinion, but what the court says is that parties can of course contract around either (c)(1) or baseline law, right, if there's -- and this is at -- it's Headnote 8, it's pin cite 123, In re Trump Entertainment Resorts, Inc., 526 B.R. 116 at 123, and the court says that there must be some express authorization from the licensor, such as a clause in the license agreement itself, that would allow there to be a derogation from the background trademark principle that trademark licenses are exclusive, right?

And so how do we apply that to the brand framework agreement and the actual license that's granted? Well, let's look at section 3.2 of the brand framework agreement.

And so to be clear, just so that we don't get lost, right, so the brand framework agreement, it granted ownership of trademarks in certain circumstances, geographies, and times, and then there were also licenses of

those assigned trademarks back. And so, in 3.2, there's a license to SunPower, and Maxeon hereby grants to SunPower and SunPower affiliates a nonexclusive, non-sublicensable, right? And so, in the field of trademarks here, the ability to sublicense and the ability to assign are essentially one and the same. And so if we're talking about specific prevailing over the general, right, even granting that 12.2 is relevant, 12.2 is, I think -- I don't think it's controversial to say that's a general assignment provision and then it dictates the circumstances under which the agreement as a whole may be assigned, this is a specific, specific intent that shows that the license back to SunPower, it's non-sublicensable.

Then 4.5, again, specific versus general. We talked about this for a long time, but as I was listening to your colloquy before, I was really struck by the exact language that's used in 4.5, right? It says, "Neither party shall, unless approved by the parties," dot, dot, dot, "sell or otherwise dispose of any of its right, title, or interest in any of the SunPower marks."

It's talking about title to and interest in a piece of property, an asset. It's not about an assignment of an agreement, right?

And, finally, let's go back to 12.2. And I know I've been harping on this, but I think the text and the words and the structure here really matter. What does it say,

right? It's a rule and then it's an exception. So the rule: This agreement may not be assigned by either party without the prior written consent. That's the rule, right? There's an exception: notwithstanding the foregoing -- that's what it says, notwithstanding the foregoing, it doesn't say notwithstanding anything herein to the contrary, notwithstanding the other provisions of this agreement -- it says, notwithstanding the foregoing sentence, this agreement may be assigned under certain circumstances.

How can this general provision override the very carefully reticulated ownership and licensing structure that is set forth with particularity with respect to discrete assets elsewhere in the agreement? I think this would just rip up all principles of contract interpretation as I know them.

I want to quickly answer two questions -- or give my view on two questions that you had for debtors' counsel before. First, you asked if section 5.2 has been triggered by the events that have happened here. And he said, no, because we're not abandoning or discontinuing the marks. But the unrebutted testimony of Mr. Henry this morning was that it was a couple things. It was that after the -- assuming the sale closes, once the sale is closed, the debtors will cease operating, number one. Number two is -- and pardon me for stating the obvious, but included among the assets being

sold are the marks -- and, number two, after the sale closes and after the debtors cease operating, they are no longer going to use the marks.

And so if we read textually 5.2 of the agreement, right, it says, "intends to discontinue use of," discontinue use of, and we have unrebutted testimony, they're not going to use them anymore. So, 5.2 is triggered.

The other question that you had is you said are there any provisions of 363 that allow the debtor to sell something that they don't have. And I think there's one -- and I don't think anybody said it's applicable here and there hasn't been a showing here -- and that's when the debtor sells the rights of a co-tenant, a tenant-in-common, or joint owner, right? That's -- but I think the presence of the specific provision like --

THE COURT: I understand your negative inference on that --

MR. KISSNER: Yeah.

THE COURT: -- I get it.

MR. KISSNER: And then, finally, I just want to address this idea that this is a forfeiture here, right, that to give impact to this contract would somehow effectuate a forfeiture of value, and it would be abhorrent to the free alienation of property rights and contrary to bankruptcy policy.

Well, they keep talking about value and a forfeiture of value here, but what I've heard is that nobody has attempted to quantify how much these marks are worth, right? The APA doesn't allocate any value to it. There's insinuation, there's innuendo, right, in the pleadings that, oh, you know, if these marks don't get sold or if the contract is enforced, this all blows up and 1300 people lose their job and we're all going home. I haven't heard anything in the record that actually says they're going to walk away if they can't get fee simple title to these marks in the United States, right? There's nothing in the record that supports that. And so I think, when we talk about value, we should be very clear about what's actually been established.

Setting that aside, though, this isn't a forfeiture of value, right? And in fact -- and the reason -- the reason why that's so is we have to take a step back and think about -- and we say this in our papers and we lead with it for a reason -- that U.S. trademark law is based off of this principle of use it or lose it, right? And it's not -- it's not like that throughout the whole world, not all countries have this idea, but in the U.S. the idea is that to prevent rent-seeking behavior, to prevent somebody from just getting their hands on something valuable and sitting around and not using it, we discourage that with trademarks. And so, if you're not actually using a mark in commerce for the

goods that are protected under that mark, then you lose it, right?

And so what section 5.2 is designed to do, it's not to effectuate a forfeiture in value, it's to prevent a forfeiture in value because, if the other party doesn't have the right to recoup those marks and reunify them as one, they might be lost forever, and any Tom, Dick, or Harry off the street can start selling SunPower branded solar panels that are imported from God knows where, and there won't be any recourse against it. So it's designed to prevent a forfeiture of value.

And more generally, you know, it's no more of a forfeiture of value than it was in the Ground Round case for the landlord. The landlord said you can have this liquor license for as long as the lease is in effect. The tenant, who operated the bar, they filed for bankruptcy. The landlord said you need to give the license back. The tenant, he could have gotten up here and I'm sure he did -- unfortunately, it was long enough ago there aren't ready transcripts, but I'm sure they would have said -- or the trustee -- this is a forfeiture of value, this rent-seeking landlord is trying to get back, claw back for no additional consideration this liquor license that can fetch a lot of value for the estate and unsecured creditors, right? That was unavailing.

The golf club and all those members in Magnus, right, it was a higher and better use of a debtor's golf country club membership to be able to sell it off to the highest bidder. It would have created a higher dividend for under-secured creditors in that case as well, right? That was a forfeiture of value. It was these golf members and the country club trying to take back for no consideration what belonged to the debtor. But, no, the court said you can't sell what you don't have, right?

Your rights outside of bankruptcy are what they are in bankruptcy unless you avoid, rescind, or otherwise destroy the contract. There's been no adequate showing of that here. And so I think this is a pretty open-and-shut case and they can't sell the marks without our consent.

Unless you have any other questions, I have nothing further.

THE COURT: I don't. That's very helpful. Thank you.

MR. KISSNER: Thank you.

THE COURT: Okay.

Anything further from anybody? Mr. Collins?

MR. COLLINS: No, Your Honor, I don't want to belabor the record or kind of go back over the arguments I've made. I'm happy to answer any questions Your Honor has --

THE COURT: No, I think -- look, I think I

understand where we are, and what I need to do is process and get a decision to all of you --

MR. COLLINS: Right.

THE COURT: -- and I want to think about how to do that in a way that's efficient, is commercial, and is consistent with my 3 o'clock hearing.

(Laughter)

MR. COLLINS: I guess I -- Your Honor, sorry to interrupt --

THE COURT: No, please.

MR. COLLINS: -- I guess there is one thing that I may have misstated to kind of close the argument that I made.

THE COURT: Okay, you can --

MR. COLLINS: And that is going back to the reservation of rights in 2.4 of the brand framework agreement. It's very carefully drafted, 2.4. When Your Honor has it, I'll --

THE COURT: Yeah, no, I see it. Go ahead.

MR. COLLINS: What I -- I guess all I wanted to say was, what's noticeably absent from that is 4.5 or 5.2, from the introductory sentence. Except for those three other sections, SunPower marks are owned exclusively by the debtors, and 4.5 and 5.2 do not give the rights that Counsel thinks they do.

THE COURT: Okay, I understand that. Okay.

MR. COLLINS: Okay.

THE COURT: Thank you, Mr. Collins, I appreciate it.

Is there anyone else who I ought to hear from on this issue?

(No verbal response)

THE COURT: All right. I am not going to be in a position to get you a decision like before -- and read it into the record before my 3 o'clock starts. I probably need like an hour to write and process and look at things again.

So what I'm -- and I don't mean to inconvenience folks, but I've got a 3 o'clock, I hope that doesn't go that long, what I propose to do is to come back on the record at 4:00 and give you a decision. If I'm not -- if I'm going to miss that deadline, we'll have something hit the docket so that everyone gets an email and you'll see when. I'm going to do this today, I appreciate the commercial realities of the world in which we're living and I want to be mindful of them, while also being mindful of my obligation to get it right, but I will try to get a decision read into the record at 4:00.

No one needs to hang around here. It's available on Zoom. The notion that you should all stick around so you can hear me read doesn't seem like a fair ask of any of you. So you're welcome -- if you're here, you're welcome here, but

you're also welcome to be on by Zoom, and I will do my best to get back on the record at 4:00, I'll do my best. If I kick that a bit -- I'll try not to, but if I do, you've been warned, but I will try my best to get you a decision at 4 o'clock, and then everyone can proceed however is appropriate in light of the decision.

So any other questions or anything else I can do to be helpful to the parties while we're here?

MS. TANCREDI: Very quickly, Your Honor, and this is more of a housekeeping matter. I'm Lisa Tancredi, I'm here on behalf of Arch Insurance Company and Applied Surety Underwriters. Our objection to the sale was designated in the agenda as resolved and I just wanted to be clear, and I think that this was said earlier, but that the resolution is --

THE COURT: Being documented.

MS. TANCREDI: No, it's based upon and it's contingent upon our cure objection being continued to the next hearing date, which I think is already apparent --

THE COURT: That's done.

MS. TANCREDI: -- so I just wanted to clarify that.

THE COURT: Okay, yeah. So the cure objections are set for whenever they're set and so I don't think there's -- I take it there's no dispute about Ms. Tancredi's point?

(No verbal response)

THE COURT: Okay, debtor -- just for the record, the debtor -- everyone at the debtors' table is nodding and saying no, so I think we're good.

MS. TANCREDI: Thank you.

THE COURT: Thank you, Ms. Tancredi.

Okay, anything else that I can do to be helpful before I actually sit down and try to do my job?

(No verbal response)

THE COURT: Okay. So thank you -- look, this is interesting and it's been well presented, and I appreciate all of the good lawyering that's done all around, both the good lawyering reflected in the various agreements that have been reached, which are much appreciated, and the good lawyering where there haven't been agreements that have been reached.

So I think I now know what I need to do, I'm going to do my best to try to get it right, and I will see all of you either here or by Zoom at 4 o'clock.

And, with that, we're adjourned. Thank you.

COUNSEL: Thank you, Your Honor.

(Recess taken at 2:04 p.m.)

(Proceedings resume at 4:00 p.m.)

THE COURT: Good afternoon. This is Judge Goldblatt. We are back on the record in SunPower and we're

here for the purpose of my giving you approval on the motion to sell.

So this isn't going to be pretty, so my apologies to all, but we'll do the best we can do.

So the debtor seeks approval of a going concern sale of its principal operating assets to Complete Solaria, Inc. Many different objections were filed. Certain objections, related to cure amounts, have been adjourned to a later hearing; other objections have been resolved consensually through language that will be in the sale order. The remaining objection is from Maxeon.

I actually agree with many of Maxeon's points about both Sections 363 and 365 of the Bankruptcy Code. I will, nevertheless, overrule its objection and approve the sale. The reason for that is that I find Maxeon's reading of the key agreement, the brand framework agreement, to be contrary to what I find to be the most natural reading of the terms of the agreement itself.

So a bit of context. Maxeon was spun off of the debtors in 2020. At the time, the parties agreed to divide ownership of the SunPower brand between the companies. SunPower retained the right to use the brand name within the United States; and Maxeon, which was, in effect, the SpinCo, would have the rights to have the brand and its marks everywhere else.

The terms of the parties' agreement was reflected in the brand framework agreement, a copy of which was admitted into evidence at the hearing today. The agreement did a number of things.

It did allocate ownership of the trademarks at issue, dividing the marks between the parties.

The nub of Maxeon's argument is that the agreement itself precludes either party from selling its part of the trademark to another party without the consent of the brand framework agreement counterparty. These trademarks are included among the assets that the debtor seeks to convey to the buyer in the transaction that is before me.

And while the gist of what Maxeon is saying is that, to the extent the debtor seeks to sell these assets under 363, they have no power to override otherwise enforceable agreements not to sell without their extent; and, to the extent the debtor seeks to assign the agreement under Section 365, the -- Maxeon's argument is that the assignment is prohibited by Section 365(c)(1) because applicable non-bankruptcy law would not require it to accept performance from another party. And as I said, while I don't agree with -- while I don't disagree with either of those statements of bankruptcy law, I do disagree about the way the brand framework agreement works.

So the Court conducted an evidentiary hearing

earlier today. I heard the live testimony from two witnesses: Matthew Henry of Alvarez & Marsal, who is the Chief Transformation Officer of the debtor, as well as Daniel Foley, who is the Chief Financial Officer of Complete Solaria, the buyer. I -- the Court admitted into evidence the declaration of Rick Polhemus of Moelis, which was the debtors' investment banker, several other documents were admitted into evidence.

My findings and conclusions now are limited to the disputed matters of the sale and not to every matter that can be -- where the details can be filled in by the agreed order.

So the two most directly applicable provisions of the agreement are Sections 4.5 and 12.2.

Section 4.5 is titled "Restrictions on Sale." And it provides that:

"Neither party shall, unless approved by the parties or the brand counsel, sell, assign, transfer, license" --

I'm skipping some words.

"-- or otherwise dispose of its right, title, or interest in or to any of the SunPower marks or the assigned SunPower trademarks to a third party, other than such party's affiliate."

So it generally operates to preclude the assignment or sale of the marks without counterparties'

consent.

Section 12.2 is called "Assignment." And it reads:

"This agreement may not be assigned by either party without the prior written consent of the other party."

Then the next sentence says:

"Notwithstanding the foregoing, either party may assign this agreement to an affiliate or to an acquirer or successor-in-interest in connection with a change of control of such party without the prior written consent of the other party, provided that such party provides the other party with written notice of any such assignment."

It goes on to say, "'Change of control' means," and there's a definition of "change of control" and -- I'm sorry. It says:

"'Change of control' means (a) The closing of a merger, consolidation, or similar transaction" --

And it goes on to continue the definition of that.

"-- or (b) The sale of all or substantially all of a party's assets."

And the relevant provision here is 12.2(b), the argument being that what is before us involves the sale of all or substantially all of the debtors' assets.

The parties have two starkly different views of how these two provisions fit together.

Maxeon's view draws on what it describes as a "sharp distinction" between intellectual property rights that it views as property that was conveyed under the agreement and other contractual obligations that it sees as executory obligations under the contract. In Maxeon's view, Section 4.5 applies to the property aspects of the agreement and, on their reading, sort of come hell or high water, those property rights cannot be sold without their consent. The executory aspects of the agreement are mere contract rights, and they are subject to 12.2, and they can be conveyed if there's a change of control or substantially all -- a sale of substantially all, et cetera. So Maxeon believes it has, in effect, an absolute veto over a sale of the trademarks themselves.

The debtor takes a different view of the agreement. It reads Section 4.5 to establish a generally applicable rule, but it views Section 12.2 to be addressed to the particular circumstances of a change in control or sale of substantially all. And in that particular situation, the provisions of Section 12.2 are the applicable provisions. Otherwise put, under the common canon of construction that the specific will prevail over the general, the debtor argues that Section 12.2 is specifically directed to a circumstance like the one present here, in which the debtor is subject to a change of control or proposes to sell substantially all of

its assets. I'm persuaded that this is the better reading of the agreement.

Maxeon's view requires one to assume that, when the parties were writing this agreement, they had in mind the distinction between those intellectual property rights that fall into the abstract category of owned property, and that Section 4.5 was focused on that category. And this view further assumes that the parties had in mind a separate category that were contractual rights that were separate from the owned property. And Maxeon's view is that Section 12.2 applies only to these contract rights and not to the property rights.

And in fairness to Maxeon, there are times when legal scholars will draw on distinctions between property rights and contract rights. But particularly in a context like this one, those distinctions are extremely fine, too fine for one to conclude that parties to a commercial agreement were relying on them. So, as a matter of contractual construction, I find it to be simply unreasonable to believe that the parties to this agreement could have been drawing the distinction that Maxeon urges.

To underscore that point, one would need to ask whether a trademark license, as opposed to the ownership of the underlying trademark, was a contract right or a property right in the underlying intellectual property. One could

make that argument either way, the license is one stick in a bundle of sticks. And that distinction ultimately devolves into what is essentially a matter of abstract philosophy. Parties could take any intellectual property right, after all, and characterize it as a covenant not to sue, in which case, it becomes a contract right. Indeed, you could have the same conversation about a real property lease. Is that a contract right or is that an interest in the underlying real property?

So my fundamental point is that, when you read a commercial agreement like the brand framework agreement, you need to read it against the backdrop that these are commercial parties seeking to give effect to a business arrangement. And in that context, the suggestion that 12.2 applies to what, from some like Aristotelian perspective, would be viewed as contract rights, while Section 4.5 is about the separate category of ownership interests, is just not a commercially sensible way to make sense of the agreement.

That conclusion is underscored by how nonsensical it would even be to be addressing the contractual rights upon a change of control or a sale of substantially all if those were to be divorced from the right to use the intellectual property. None of the other rights in the agreement would make any sense in a world in which the buyer would lose the

right to use the trademarks.

So, for those reasons, I conclude that the only reasonable construction of the agreement is the one the debtors offer, under which Section 4.5 generally prohibits the sale of IP, but in which Section 12.2 provides a specific exception in a situation in which there is a change of control or a sale of substantially all of the debtors' assets.

On the record before this Court, after today's evidentiary hearing, I'm satisfied that the requirements of that section are satisfied. Whether the specific Complete Solaria transaction is viewed in isolation or in conjunction with the other sales that are now underway, the debtor is selling substantially all of its assets under any of the various definitions of "sale of substantially all" that any of the parties has proposed.

With respect to the portion of the transaction in which the debtor does intend to assign the executory contract, I conclude that the requirements of Section 365(c) are met.

The debtor, in fairness, has a reasonably interesting argument from the language of Section 365(c)(1), in which it points out that Section 365(c)(1) imposes restrictions, quote:

"-- whether or not such contract or lease

prohibits or restricts the assignment of rights."

But I think it's clear from the case law that that is about sort of permitting what are effectively implicit anti-assignment provisions, not about overriding express provisions that permit the assignment.

And there, both parties point me to Judge Gross' thoughtful opinion in In Re Trump Entertainment Resorts, which is at 526 B.R. 116 (Bankr. D. Del. 2015). And that's essentially the conclusion the Court reaches there. He finds, as the -- as Maxeon argues here, that federal trademark law generally bans assignment of trademark licenses, absent the licensor's consent because, in order to ensure that all products bearing its trademark are of uniform quality, the identity of the licensee is crucially important to the licensor.

And that, as a general matter, is not disputed and is a true statement. As a general proposition, I don't think anyone disputes that trademark licenses that are non-assignable by their terms, that the anti-assignment provision cannot be overridden under Section 365(c). But the -- well, Judge Gross goes on to say that:

"This is only a default rule, which the parties to a license agreement are free to contract around."

And what I conclude is that Section 12.2 does exactly that; it provides a basis to override limitations on

the ability to assign the agreement in circumstances that involve a sale of substantially all.

That raises -- or that leaves, by my lights, really only the questions of adequate assurance of future performance under the contract.

To that regard, I credit the testimony of Mr. Foley, who makes clear that the buyer will have both the liquidity and other financial means to meet its obligations and to perform under the contract. While Maxeon capably cross-examined Mr. Foley with evidence about prior litigation and the like, none of that persuades me that -- or overcomes the debtors' showing that the buyer will be able to meet its obligations under the contract.

This -- the circumstances demonstrate and Mr. Foley's testimony made clear that this is essentially -- the buyer is a business that is, itself, being fundamentally restarted. It is taking most of the employees -- the record suggests it's taking most of the employees from the debtor. And nothing in the prior litigation provides any reason to suggest that the buyer, following closing of the sale, will not be a good steward of the intellectual property and live up to the obligations that are -- that it is undertaking under the parties' various agreements.

So, for those reasons -- apologies for the long-winded recitation. But for those reasons, I'm satisfied that

the debtor has met its burden of demonstrating the propriety of the sale and I will enter an order so providing.

So can I answer any questions? Yes, Mr. Kissner.

MR. KISSNER: Thanks, Your Honor. For the record, Andrew Kissner, Morrison & Foerster, on behalf of Maxeon.

I guess our question would be one of the things in the proposed form of order, they found -- or that they are requesting from the Judge -- or from the Court --

THE COURT: That's me --

MR. KISSNER: -- is the --

THE COURT: -- yep.

MR. KISSNER: That's you. Is the --

THE COURT: Even after a long day.

MR. KISSNER: Is the waiver of the 6004(h) stay period. We don't think that there's been a showing of that. I think the fact that this was -- we disagree with the ruling, of course, but respectfully, you know -- we respect your decision. But the fact that this did cause some consternation and that this -- there is no clear black-letter law here, we think that reasonable minds could disagree on this and that there could be merits for an appeal. I don't know what my client wants to do. But particularly, given that they're asking for a 363(m) finding here, we would just like some time to seek a stay pending appeal, if that's the way to go.

And I would just note that, under the third interim cash collateral order, they have a week to close, and so I think that's ...

THE COURT: So, look, I hear you. I'm going to grant the waiver, not because I think that there is -- there are no arguments here. I mean, I found what I found, but I am not -- I'm not minimizing the reasonableness of your arguments. But I am satisfied on the whole record of this case.

So, I mean, look, in a perfect world, I would have taken another day to craft a ruling that would have been less garbled than what I just did. And the reason I didn't is because I'm satisfied on the record of this case that there are exigencies that require moving quickly. Indeed, that's been much of the story of this case. And so those same reasons counsel in favor of granting the waiver and permitting the order to be effective upon entry.

Obviously, if the District Court says otherwise, then that is what it is. But I'm not inclined and under the circumstances here to stay it pending the District Court so providing.

MR. KISSNER: Understood.

And just for the clarity of the record then, I am going to make an oral motion for a stay pending appeal. And I understand --

THE COURT: Okay.

MR. KISSNER: -- I think, about how you're rule, but --

THE COURT: If what -- yeah, if you wanted more words from me, I would give them. But I take it what you need is me to have denied it, so that you can file a motion for a stay, and that is so provided.

So the motion is denied. I'm satisfied that applying the equitable factors, that, while the likelihood of success is not zero, it's mostly my concern for irreparable injury on the other side, given the debtors' showing of a tight budget and the need to move quickly; and so, for that reason, I'll deny the stay.

MR. KISSNER: Okay. Thank you, Your Honor.

THE COURT: Thank you.

Anything further from the debtor?

UNIDENTIFIED: No, Your Honor.

THE COURT: Okay. So we will await an order, which -- and we'll enter that upon it being -- upon receipt of a certification.

And while we're here, is there any other party-in-interest that would like to be heard on any matter? Okay. Anyone? Counsel?

MR. MADRON: Your Honor, just a procedural question.

THE COURT: Yes.

MR. MADRON: For the record, Jason Madron of Richards, Layton & Finger for the debtors.

We did file a proposed form of order this morning during the proceedings, which I understand Your Honor may not have had an opportunity to review.

THE COURT: And I still have not. So you have filed a form of order that -- and you're -- are you representing that that form of order addresses all of the language changes and the like that have been requested and that you've agreed to?

MR. MADRON: Yes. I am informed by our colleagues by Kirkland, before they left, that that is the final form of order.

THE COURT: Okay.

MR. MADRON: Would it be acceptable to upload that to save --

THE COURT: Yes.

MR. MADRON: -- certification practice?

THE COURT: Yeah. Based on that representation -- and that representation is, effectively, that you're certifying that it's been -- that everyone who has commented, it reflects all of their changes and is agreeable to the parties, obviously, reserving Maxeon's rights, I'm happy to enter that form of order.

MR. MADRON: Very good, Your Honor.

THE COURT: So, if you upload it, we'll enter that as soon as it's uploaded.

MR. MADRON: When we get back to the office, we shall do so, and we'll let chambers know when that is done.

THE COURT: Okay. Very well.

MR. MADRON: Thank you very much, Your Honor.

THE COURT: Thank you.

Any other party-in-interest wish to be heard while we're here?

(No verbal response)

THE COURT: Okay. Seeing none.

Let me, again, thank the parties. This was well presented, and you've -- I can't say you've made my job easy, but you've made it easier by presenting the issues very capably, so you all have my thanks.

And with that, we're adjourned. Thank you.

COUNSEL: Thank you. Thank you, Your Honor.

(Proceedings concluded at 4:20 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling September 24, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams September 24, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable

/s/ Coleen Rand September 24, 2024

Coleen Rand, CET-341

Certified Court Transcriptionist

For Reliable